

**THE AMERICAN COMMONWEALTH**

THE  
AMERICAN COMMONWEALTH

BY

JAMES BRYCE

AUTHOR OF "THE HOLY ROMAN EMPIRE"  
M.P. FOR ABERDEEN.

IN TWO VOLUMES

VOL. I

THE NATIONAL GOVERNMENT—THE STATE GOVERNMENTS

THIRD EDITION.  
COMPLETELY REVISED THROUGHOUT  
WITH ADDITIONAL CHAPTERS

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*To my Friends and Colleagues*

ALBERT VENN DICEY  
THOMAS ERSKINE HOLLAND

## PREFACE TO THE FIRST EDITION

As the introductory chapter of this work contains such explanations as seem needed of its scope and plan, the Author has little to do in this place except express his thanks to the numerous friends who have helped him with facts, opinions, and criticisms, or by the gift of books or pamphlets. Among these he is especially indebted to the Hon. Thomas M. Cooley, now Chairman of the Interstate Commerce Commission in Washington; Mr. James B. Thayer of the Harvard Law School, Cambridge, Mass.; Hon. Seth Low, formerly Mayor of Brooklyn; Mr. E. L. Godkin of New York; Mr. Theodore Roosevelt of New York; Mr. G. Bradford of Cambridge, Mass.; and Mr. Theodore Bacon of Rochester, N.Y.; by one or other of whom the greater part of the proofs of these volumes have been read. He has also received valuable aid from Mr. Justice Holmes of the Supreme Court of Massachusetts; Mr. Theodore Dwight, late Librarian of the State Department at Washington; Mr. H. Villard of New York; Dr. Albert Shaw of Minneapolis; Mr. Jesse Macy of Grinnell, Ia.; Mr. Simeon Baldwin and Dr. George P. Fisher of New Haven, Conn.; Mr. Henry C. Lea of Philadelphia; Col. T. W. Higginson of Cambridge, Mass.; Mr. Bernard Moses of Berkeley, Cal.; Mr. A. B. Houghton of Corning, N.Y.; Mr. John Hay of Washington; Mr. Henry Hitchcock of

St. Louis, Mo.; President James B. Angell of Ann Arbor, Mich.; Hon. Andrew D. White of Syracuse, N.Y.; Mr. Frank J. Goodnow and Mr. Edward P. Clark of New York; Dr. Atherton of the State College, Pennsylvania; and the authorities of the U.S. Bureau of Education. No one of these gentlemen is, however, responsible for any of the facts stated or views expressed in the book.

The Author is further indebted to Mr. Low for a chapter written by him, which contains matter of much interest relating to municipal government and politics.

He gladly takes this opportunity of thanking for their aid and counsel four English friends: Mr. Henry Sidgwick, who has read most of the proofs with great care and made valuable suggestions upon them; the Rev. Stopford A. Brooke, whose literary criticisms have been very helpful; Mr. Albert V. Dicey, and Mr. W. Robertson Smith.

He is aware that, notwithstanding the assistance rendered by friends in America, he must have fallen into not a few errors, and without asking to be excused for these, he desires to plead in extenuation that the book has been written under the constant pressure of public duties as well as of other private work, and that the difficulty of obtaining in Europe correct information regarding the constitutions and laws of American States and the rules of party organizations is very great.

When the book was begun, it was intended to contain a study of the more salient social and intellectual phenomena of contemporary America, together with descriptions of the scenery and aspects of nature and human nature in the West, all of whose States and Territories the Author has visited. But as the work advanced, he found that to

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carry out this plan it would be necessary either unduly to curtail the account of the government and politics of the United States, or else to extend the book to a still greater length than that which, much to his regret, it has now reached. He therefore reluctantly abandoned the hope of describing in these volumes the scenery and life of the West. As regards the non-political topics which were to have been dealt with, he has selected for discussion in the concluding chapters those of them which either were comparatively unfamiliar to European readers, or seemed specially calculated to throw light on the political life of the country, and to complete the picture which he has sought to draw of the American Commonwealth as a whole.

*October 22, 1888.*

## PREFACE TO THE THIRD EDITION.

THIS edition has been carefully revised throughout: all difficult and controverted points have been reconsidered, the Constitutional changes in the States since 1889 have been (so far as possible) noted, and the figures of population have been corrected by the census returns of 1890, those relating to education by the latest available Report of the Bureau of Education.

While some few chapters have been slightly abridged, large additions have been made to others, especially in Parts III. and V. In particular, four new chapters have been written and inserted in Part V., chapters which belonged to the original plan of the book, but which it was found impossible to insert in the first edition. Considerations of space have compelled the omission of other chapters which the author has at various times sketched out.

While endeavouring to watch the course of current history in the United States, and to profit by the light which it throws on the institutions and political habits of the country, the author has thought it undesirable to make frequent references thereto, not merely because he might thus be led into the field of party controversy, but still more because the relative magnitude and true import of events is seldom discoverable until there has been time for them to fall, so to speak, into their due perspective. He may perhaps be permitted to add that

though many things have happened since October, 1888, none of them has seemed to him to require an alteration in the substance, though he has occasionally modified the form and expression, of the views stated in the first edition of the book.

The author gladly takes this opportunity of thanking those in America, many of them previously unknown to him, who have sent him letters calling attention to statements which they consider questionable. He has also to acknowledge help received not only from some of those mentioned in the former preface, but from many others also, especially from President Eliot of Harvard University, Senator H. C. Lodge, Representatives W. L. Wilson and W. C. Breckinridge, Professors Anson D. Morse, J. B. McMaster, A. B. Hart, E. R. A. Seligman, J. W. Jenks, and E. J. James, Messrs. Alfred Russell, Charles F. Adams, Amasa M. Eaton, T. N. Brown, J. B. Bishop, F. J. Stimson, L. N. Dembitz, R. H. Dana, W. P. Garrison, R. P. Porter, E. J. McDermott, V. M. Francis, Judge Elliot, Professor Dunbar and Mr. Closson of Harvard University, Messrs. Hilary A. Herbert, Charles Reemelin, and Herbert Welsh, Dr. Washington Gladden, and the Secretaries of State of the six new States, as well as from Mr. J. G. Bourinot of Ottawa, Canada.

Nor can he let pass this opportunity of expressing his hearty gratitude for the kindness with which his efforts to set forth the political and social phenomena of the United States have been received in that country. The expressions of approval he has received from a great number of persons in various parts of the United States have far more than repaid him for the labour of preparing the book, and for the scarcely less severe labour of revising it under the increased pressure of public duties in his own country.

*October 22nd, 1894.*

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## LIST OF PRESIDENTS

1789-1793	GEORGE WASHINGTON.
1793-1797	Re-elected.
1797-1801	JOHN ADAMS.
1801-1805	THOMAS JEFFERSON.
1805-1809	Re-elected.
1809-1813	JAMES MADISON.
1813-1817	Re-elected.
1817-1821	JAMES MONROE.
1821-1825	Re-elected.
1825-1829	JOHN QUINCY ADAMS.
1829-1833	ANDREW JACKSON.
1833-1837	Re-elected.
1837-1841	MARTIN VAN BUREN.
1841-1845	WILLIAM HENRY HARRISON (died 1841). JOHN TYLER.
1845-1849	JAMES KNOX POLK.
1849-1853	ZACHARY TAYLOR (died 1850). MILLARD FILLMORE.
1853-1857	FRANKLIN PIERCE.
1857-1861	JAMES BUCHANAN.
1861-1865	ABRAHAM LINCOLN.
1865-1869	Re-elected (died 1865). ANDREW JOHNSON.
1869-1873	ULYSSES S. GRANT.
1873-1877	Re-elected.
1877-1881	RUTHERFORD BIRCHARD HAYES.
1881-1885	JAMES ABRAM GARFIELD (died 1881). CHESTER A. ARTHUR.
1885-1889	(STEPHEN) GROVER CLEVELAND.
1889-1893	BENJAMIN HARRISON.
1893-	GROVER CLEVELAND.

## AREA, POPULATION, AND DATE OF ADMISSION OF THE STATES

### THE THIRTEEN ORIGINAL STATES, IN THE ORDER IN WHICH THEY RATIFIED THE CONSTITUTION.

	Ratified the Constitution.	Area in square miles. <sup>1</sup>	Population (1890).
Delaware . . .	1787	2,050	168,493
Pennsylvania . . .	1787	45,215	5,258,014
New Jersey . . .	1787	7,815	1,444,933
Georgia . . .	1788	59,475	1,837,353
Connecticut . . .	1788	4,990	746,258
Massachusetts . . .	1788	8,315	2,238,943
Maryland . . .	1788	12,210	1,042,390
South Carolina . . .	1788	30,570	1,151,149
New Hampshire . . .	1788	9,305	376,530
Virginia . . .	1788	42,450	1,655,980
New York . . .	1788	49,170	5,997,853
North Carolina . . .	1789	52,250	1,617,947
Rhode Island . . .	1790	1,250	345,506

### STATES SUBSEQUENTLY ADMITTED, IN THE ORDER OF THEIR ADMISSION.

Vermont . . .	1791	9,565	332,422
Kentucky . . .	1792	40,400	1,858,635
Tennessee . . .	1796	42,050	1,767,518
Ohio . . .	1802	41,060	3,672,316
Louisiana . . .	1812	48,720	1,118,587
Indiana . . .	1816	36,350	2,192,404
Mississippi . . .	1817	46,810	1,289,600
Illinois . . .	1818	56,650	3,826,351
Alabama . . .	1819	52,250	1,513,017

<sup>1</sup> According to census returns of 1890.

	Admitted.	Area in square miles.	Population (1890).
Maine . . . .	1820	33,040	661,086
Missouri . . . .	1821	69,415	2,679,184
Arkansas . . . .	1836	53,850	1,128,179
Michigan . . . .	1837	58,915	2,093,889
Florida . . . .	1845	58,680	391,422
Texas . . . .	1845	265,780	2,235,523
Iowa . . . .	1846	56,025	1,911,896
Wisconsin . . . .	1848	56,040	1,686,880
California . . . .	1850	158,360	1,208,130
Minnesota . . . .	1858	83,365	1,301,826
Oregon . . . .	1859	96,030	313,767
Kansas . . . .	1861	82,080	1,427,096
W. Virginia . . . .	1863	24,780	762,794
Nevada . . . .	1864	110,700	45,761
Nebraska . . . .	1867	77,510	1,058,910
Colorado . . . .	1876	103,925	412,198
N. Dakota . . . .	1889	70,795	182,719
S. Dakota . . . .	1889	77,650	328,808
Montana . . . .	1889	146,080	132,159
Washington . . . .	1889	69,180	349,390
Wyoming . . . .	1890	97,890	60,705
Idaho . . . .	1890	84,800	84,385
Utah <sup>1</sup> . . . .	1895-6	84,970	207,905

## THE TERRITORIES.

	Area.	Population in 1890.
New Mexico . . . .	122,580	153,593
Arizona . . . .	113,020	59,620
Oklahoma . . . .	39,030	61,834

## UNORGANIZED TERRITORIES.

	Area.	Population in 1890.
Indian Territory . . . .	31,400	179,321
Alaska . . . .	531,409	31,795

<sup>1</sup> An act was passed in Congress, in the summer of 1894, entitling Utah to enter, at a future specified date, the States of the Union.

**DATES OF SOME REMARKABLE EVENTS IN THE HISTORY OF  
THE NORTH AMERICAN COLONIES AND UNITED STATES**

- 1606 First Charter of Virginia.
- 1607 First Settlement in Virginia.
- 1620 First Settlement in Massachusetts.
- 1664 Taking of New Amsterdam (New York).
- 1759 Battle of Heights of Abraham and taking of Quebec.
- 1775 Beginning of the Revolutionary War.
- 1776 Declaration of Independence.
- 1781 Formation of the Confederation.
- 1783 Independence of United States recognized.
- 1787 Constitutional Convention at Philadelphia.
- 1788 The Constitution ratified by Nine States.
- 1789 Beginning of the Federal Government.
- 1793 Invention of the Cotton Gin.
- 1803 Purchase of Louisiana from France.
- 1812-14 War with England.
- 1812-15 Disappearance of the Federalist Party.
- 1819 Purchase of Florida from Spain.
- 1819 Steamers begin to cross the Atlantic.
- 1820 The Missouri Compromise.
- 1828-32 Formation of the Whig Party.
- 1830 First Passenger Railway opened.
- 1840 National Nominating Conventions regularly established.
- 1844 First Electric Telegraph in operation.
- 1845 Admission of Texas to the Union.
- 1846-48 Mexican War and Cession of California.
- 1852-56 Fall of the Whig Party
- 1854-56 Formation of the Republican Party.
- 1857 Dred Scott decision delivered.
- 1861-65 War of Secession.
- 1869 First Trans-Continental Railway completed.
- 1877 Final withdrawal of Federal troops from the South.
- 1879 Specie Payments resumed.

# APPENDIX

## NOTE TO CHAPTER III

### ON CONSTITUTIONAL CONVENTIONS

In America it is always by a convention (*i. e.* a representative body called together for some occasional or temporary purpose) that a constitution is framed. It was thus that the first constitutions for the thirteen revolting colonies were drawn up and enacted in 1776 and the years following; and as early as 1780 the same plan had suggested itself as the right one for framing a constitution for the whole United States.<sup>1</sup> Recognized in the Federal Constitution (Art. v.) and in the successive Constitutions of the several States as the proper method to be employed when a new constitution is to be prepared, or an existing constitution revised throughout, it has now become a regular and familiar part of the machinery of American government, almost a necessary part, because all American legislatures are limited by a fundamental law, and therefore when a fundamental law is to be repealed or largely recast, it is desirable to provide for the purpose a body distinct from the ordinary legislature. Where it is sought only to change the existing fundamental law in a few specified points, the function of proposing these changes to the people for their acceptance may safely be left, and generally is left, to the legislature. Originally a convention was conceived of as a sovereign body, wherein the full powers of the people were vested by popular election. It is now, however, usually an advisory body, which prepares a draft of a new constitution and submits it to the people for their acceptance or rejection.<sup>2</sup> And it is not deemed to be sovereign in the sense of possessing the plenary authority of the people, for its powers may be, and now almost invariably are, limited by the statute under which the people elect it.<sup>3</sup>

<sup>1</sup> It is found in a private letter of Alexander Hamilton (then only twenty-three years of age) of that year.

<sup>2</sup> The only recent exception to the now unvarying rule that conventions merely draft constitutions was furnished in 1890 by the State of Mississippi, where a convention, convoked under a statute, not only prepared, but actually enacted, the present Constitution of the State. The circumstances were peculiar, and the same thing would not happen in any Northern State. As to Kentucky, see p. 433.

<sup>3</sup> The State Conventions which carried, or rather affected to carry, the seceding Slave States out of the Union, acted as sovereign bodies. Their proceedings, however, though clothed with legal forms, were practically revolutionary.

Questions relating to the powers of a Constitutional Convention have several times come before the courts, so that there exists a small body of law as well as a large body of custom and practice regarding the rights and powers of such assemblies. Into this law and practice I do not propose to enter. But it is worth while to indicate certain advantages which have been found to attach to the method of entrusting the preparation of a fundamental instrument of government to a body of men specially chosen for the purpose instead of to the ordinary legislature. The topic suggests interesting comparisons with the experience of France and other European countries in which constitutions have been drafted and enacted by the legislative, which has been sometimes also practically the executive, authority. Nor is it wholly without bearing on problems which have recently arisen in England, where Parliament has found itself, and may find itself again, invited to enact what would be in substance a new constitution for a part of the United Kingdom.

An American Constitutional Convention, being chosen for the sole purpose of drafting a constitution, and having nothing to do with the ordinary administration of government, no influence or patronage, no power to raise or appropriate revenue, no opportunity of doing jobs for individuals or corporations, is not necessarily elected on party lines or in obedience to party considerations.<sup>1</sup> Hence men comparatively indifferent to party are sometimes elected; while those who seek to enter a legislature for the sake of party advancement or the promotion of some private gainful object do not generally care to serve in a convention.

When the convention meets, it is not, like a legislature, a body strictly organized by party. A sense of individual independence and freedom may prevail unknown in legislatures. Proposals have therefore a chance of being considered on their merits. A scheme does not necessarily command the support of one set of men nor encounter the hostility of another set because it proceeds from a particular leader or group. And as the ordinary party questions do not come up for decision while its deliberations are going on, men are not thrown back on their usual party affiliations, nor are their passions roused by exciting political issues.

Having no work but constitution-making to consider, a convention is free to bend its whole mind to that work. Debate has less tendency to stray off to irrelevant matters. Business advances because there are no such interruptions as a legislature charged with the ordinary business of government must expect.

Since a convention assembles for one purpose only, and that a purpose specially interesting to thoughtful and public-spirited citizens; and since its duration is short, men who would not care to enter a legislature, men pressed by professional labours, or averse to the "rough and tumble" of politics, a class large in America and increasing in Europe, are glad to serve on it, while mere jobbers or office-seekers find little to attract them

<sup>1</sup> The questions of practical importance to the States which a State Convention deals with are very often not in issue between the two State parties, seeing that the latter are formed on national lines.

in its functions.<sup>1</sup> Thus the level of honesty, even more than of ability, is higher in conventions than in legislatures.

The fact that the constitution when drafted has to be submitted to the people, by whose authority it will (if accepted) be enacted, gives to the convention a somewhat larger freedom for proposing what they think best than a legislature, courting or fearing its constituents, commonly allows itself. As the convention vanishes altogether when its work is accomplished, the ordinary motives for popularity-hunting are less potent. As it does not legislate but merely proposes, it need not fear to ask the people to enact what may offend certain persons or classes, for the odium, if any, of harassing these classes will rest with the people. And as the people must accept or reject the draft *en bloc* (unless in the rare case where provision is made for voting on particular points separately), more care is taken in preparing the draft, in clearing it of errors and repugnances, than a legislature capable of repealing or altering in its next session what it now provides, bestows on the details of its measures.

Those who are familiar with European parliaments may conceive that as a set-off to these advantages there will be a difficulty in getting a number of men not organized by parties to work promptly and efficiently, that a convention will be, so to speak, an amorphous body, that if it has no leaders nor party allegiance it will divide one way to-day and another way to-morrow, that the abundance of able men will mean an abundance of doctrinaire proposals and a reluctance to subordinate individual prepossessions to practical success. Admitting that such difficulties do sometimes arise, it may be observed that in America men quickly organize themselves for any and every purpose, and that doctrinairism is there so uncommon a fault as to be almost a merit. When a complete new constitution is to be prepared, the balance of convenience is decidedly in favour of giving the work to a convention, for although conventions are sometimes unwise, they are usually composed of far abler men than those who fill the legislatures, and discharge their function with more wisdom as well as with more virtue. But where it is not desired to revise the whole frame of government, the simpler and better plan is to proceed by submitting to the people specific amendments, limited to particular provisions of the existing constitution; and this is the method now most generally employed in improving State constitutions.

The above remarks are of course chiefly based on the history of State conventions, because no national constitutional convention has sat since 1787. But they apply in principle to any constitution-making body.

<sup>1</sup> Many of the men conspicuous in the public life of Massachusetts during the succeeding thirty years first made their mark in the Constitutional Convention of 1853. The draft framed by that Convention was, however, rejected by the people. The new Constitution for New York, framed by the Convention of 1867, was also lost at the polls. That Convention was remarkable as being (according to Judge Jameson) the only one in which the requirement that a delegate must be resident in the district electing him was dispensed with (*Constit. Conventions*, § 267).

## NOTE TO CHAPTER IV

## WHAT THE FEDERAL CONSTITUTION OWES TO THE CONSTITUTIONS OF THE SEVERAL STATES

THE following statement of the provisions of the Federal Constitution which have been taken from or modelled upon State constitutions, is extracted from a valuable article by the late Mr. Alexander Johnston in the *New Princeton Review* for September 1887:—

“That part of the Constitution, which has attracted most notice abroad, is probably its division of Congress into a Senate and a House of Representatives, with the resulting scheme of the Senate as based on the equal representation of the States. It is probably inevitable that the upper or hereditary House in foreign legislative bodies shall disappear in time. And it is not easy to hit on any available substitute; and English writers for examples, judging from the difficulty of finding a substitute for the House of Lords, have rated too high the political skill of the Convention in hitting upon so brilliant a success as the Senate. But the success of the Convention was due to the antecedent experience of the States. Excepting Pennsylvania and Vermont, which then gave all legislative powers to one House, and executive powers to a governor and council, all the States had bicameral systems in 1787.<sup>1</sup>

“The name ‘Senate’ was used for the Upper House in Maryland, Massachusetts, New York, North Carolina, New Hampshire, and South Carolina and Virginia; and the name ‘House of Representatives,’ for the Lower House, was in use in Massachusetts, New Hampshire, and South Carolina, as well as in Pennsylvania and Vermont.

“The rotation, by which one-third of the Senate goes out every two years, was taken from Delaware, where one-third went out each year, New York (one-fourth each year), Pennsylvania (one-third of the council each year), and Virginia (one-fourth each year). The provisions of the whole fifth section of Art. i., the administration of the two Houses, their power to decide the election of their members, make rules and punish their violation, keep a journal, and adjourn from day to day, are in so many State constitutions that no specification is needed for them.

“The provision that money-bills shall originate in the House of Representatives is taken almost word for word from the Constitutions of Massachusetts and New Hampshire, as is the provision, which has never been needed, that the President may adjourn the two Houses when they cannot agree on a time of adjournment. The provision for a message is from the

<sup>1</sup> Georgia, however, had not till 1789 a true second chamber, her constitution of 1777 having merely created an executive council elected by the Assembly from among its own members.

Vermont was not one of the thirteen original States, but was a semi-independent commonwealth, not a member of the Confederation of 1781, not represented in the Convention of 1787, and not admitted to the Union till 1791.

Constitution of New York. All the details of the process of impeachment as adopted by the Convention may be found in the Constitutions of Delaware, Massachusetts, New Hampshire, New York, Pennsylvania, South Carolina, Vermont, Virginia, even to the provision in the South Carolina system that conviction should follow the vote of two-thirds of the members present. (It should be said, however, that the limitation of sentence in case of conviction to removal from office and disqualification for further office-holding is a new feature.) Even the much-praised process of the veto is taken *en bloc* from the Massachusetts Constitution of 1780, and the slight changes are so evidently introduced as improvements on the language alone as to show that the substance was copied.

"The adoption of different bases for the two Houses — the House of Representatives representing the States according to population, while the Senate represented them equally — was one of the most important pieces of work which the Convention accomplished as well as the one which it reached most unwillingly. All the States had been experimenting to find different bases for their two Houses. Virginia had come nearest to the appearance or the final result in having her Senate chosen by districts and her representatives by counties; and, as the Union already had its 'districts' formed (in the States), one might think that the Convention merely followed Virginia's experience. But the real process was far different and more circuitous. There were eleven States represented in the Convention, New Hampshire taking New York's place when the latter withdrew, and Rhode Island sending no delegates. Roughly speaking, five States wanted the 'Virginia plan' above stated; five wanted one House as in the Confederation with State equality in it; and one (Connecticut) had a plan of its own to which the other ten States finally acceded. The Connecticut system since 1699, when its legislature was divided into two Houses, had maintained the equality of the towns in the Lower House, while choosing the members of the Upper House from the whole people. In like manner its delegates now proposed that the States should be equally represented in the Senate, while the House of Representatives, chosen from the States in proportion to population, should represent the people numerically. The proposition was renewed again and again for nearly a month until the two main divisions of the Convention, unable to agree, accepted the 'Connecticut compromise,' as Bancroft calls it, and the peculiar constitution of the Senate was adopted.

"The President's office was simply a development of that of the governors of the States. The name itself had been familiar; Delaware, New Hampshire, Pennsylvania, and South Carolina, had used the title of President instead of that of Governor. In all the States the governor was commander-in-chief, except that in Rhode Island he was to have the advice of six assistants, and the major part of the freemen, before entering upon his duties. The President's pardoning power was drawn from the example of the States; they had granted it to the governors (in some cases with the advice of a council) in all the States except Connecticut, Rhode Island, and Georgia, where it was retained to the legislature, and in South Carolina, where it seems to have been forgotten in the Constitu-

tion of 1778, but was given to the governor in 1790. The governor was elected directly by the people in Connecticut, Massachusetts, New York, and Rhode Island, and indirectly by the two Houses in the other eight States; and in this nearly equal division we may, perhaps, find a reason for the Convention's hesitation to adopt either system, and for its futile attempt to introduce an electoral system, as a compromise. The power given to the Senate of ratifying or rejecting the President's appointments seems to have been an echo of New York's council of appointment; the most strenuous and persistent efforts were made to provide a council to share in appointments with the President; the admission of the Senate as a substitute was the furthest concession which the majority would make; and hardly any failure of details caused more heart-burnings than the rejection of this proposed council for appointments.

"The President's power of filling vacancies, by commissions to expire at the end of the next session of the Senate, is taken in terms from the Constitution of North Carolina.

"Almost every State prescribed a form of oath for its officers; the simple and impressive oath of the President seems to have been taken from that of Pennsylvania, with a suggestion, much improved in language, from the oath of allegiance of the same State. The office of vice-president was evidently suggested by that of the deputy, or lieutenant-governor (in four States the vice-president) of the States. The exact prototype of the office of vice-president is to be found in that of the lieutenant-governor of New York. He was to preside in the Senate, without a vote, except in case of a tie, was to succeed the governor, when succession was necessary, and was to be succeeded by the President *pro tempore* of the Senate.

"The provisions for the recognition of inter-State citizenship, and for the rendition of fugitive slaves and criminals, were a necessity in any such form of government as was contemplated, but were not at all new. They had formed a part of the eighth article of the New England Confederation of 1643. Finally the first ten amendments, which were tacitly taken as a part of the original instrument, are merely a selection from the substance or the spirit of the Bills of Rights which preceded so many of the State constitutions.

"The most solid and excellent work done by the Convention was its statement of the powers of Congress (in § 8 of Art. i.) and its definition of the sphere of the Federal judiciary (in Art. iii.). The results in both of these cases were due, like the powers denied to the States and to the United States (in §§ 9 and 10 of Art. i.), to the previous experience of government by the States alone. For eleven years or more (to say nothing of the antecedent colonial experience) the people had been engaged in their State governments in an exhaustive analysis of the powers of government. The failures in regard to some, the successes in regard to others, were all before the Convention for its consideration and guidance.

"Not creative genius, but wise and discreet selection was the proper work of the Convention; and its success was due to the clear perception of the antecedent failures and successes, and to the self-restraint of its members.

"The (presidential) electoral system was almost the only feature of the Constitution not suggested by State experience,<sup>1</sup> almost the only feature which was purely artificial, not a natural growth; it was the one which met with least criticism from contemporary opponents of the Constitution and most unreserved praise from the *Federalist*; and democracy has ridden right over it."

## NOTE TO CHAPTER X

### EXTRACTS FROM THE RULES OF THE SENATE

A QUORUM shall consist of a majority of the senators, duly chosen and sworn.

The legislative, the executive, the confidential legislative proceedings, and the proceedings when sitting as a Court of Impeachment, shall each be recorded in a separate book.

When the yeas and nays are ordered, the names of senators shall be called alphabetically; and each senator shall, without debate, declare his assent or dissent to the question, unless excused by the Senate; and no senator shall be permitted to vote after the decision shall have been announced by the presiding officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote.

When a senator declines to vote on call of his name, he shall be required to assign his reasons therefor, and on his having assigned them, the presiding officer shall submit the question to the Senate, "Shall the senator for the reasons assigned by him, be excused from voting?" which shall be decided without debate.

In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall elect the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

At the second or any subsequent session of a Congress, the legislative business which remained undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place.

<sup>1</sup> But it is well observed by Mr. J. H. Robinson (*Original and Derived Features of the United States Constitution*, p. 29) that this system may have been suggested by the Constitution of Maryland (1776), which provided for a choice of the State Senators by a body of electors chosen every five years by the people for this purpose. Mr. Robinson rightly disapproves Sir H. Maine's comparison of the electoral system of the Romano-Germanic Empire.

On a motion made and seconded to close the doors of the Senate, on the discussion of any business which may, in the opinion of a senator, require secrecy, the presiding officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.

When the President of the United States shall meet the Senate in the Senate chamber for the consideration of executive business, he shall have a seat on the right of the presiding officer. When the Senate shall be convened by the President of the United States to any other place, the presiding officer of the Senate and the senators shall attend at the place appointed, with the necessary officers of the Senate.

When acting upon confidential or executive business, unless the same shall be considered in open executive session, the Senate chamber shall be cleared of all persons except the secretary, the chief clerk, the principal legislative clerk, the executive clerk, the minute and journal clerk, the sergeant-at-arms, the assistant doorkeeper, and such other officers as the presiding officer shall think necessary, and all such officers shall be sworn to secrecy.

All confidential communications made by the President of the United States to the Senate shall be by the senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon, shall also be kept secret until the Senate shall, by their resolution, take off the injunction of secrecy, or unless the same shall be considered in open executive session.

Any senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

On the final question to advise and consent to the ratification of a treaty in the form agreed to, the concurrence of two-thirds of the senators present shall be necessary to determine it in the affirmative; but all other motions and questions upon a treaty shall be decided by a majority vote, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds.

When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" Which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

All information communicated or remarks made by a senator, when acting upon nominations, concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret.

## NOTE (A) TO CHAPTER XVI

## PRIVATE BILLS

In England a broad distinction is drawn between public bills and local or private bills. The former class includes measures of general application, altering or adding to the general law of the land. The latter includes measures intended to apply only to some particular place or person, as for instance, bills incorporating railway or gas or water companies or extending the powers of such bodies, bills authorizing municipalities to execute public improvements, as well as estate bills, bills relating to charitable foundations, and (for Ireland) divorce bills.<sup>1</sup> Bills of the local and personal class have for many years past been treated differently from public bills. They are brought in, as it is expressed, on petition, and not on motion. Notice is required to be given of such a bill by advertisement nearly three months before the usual date of the meeting of Parliament, and copies must be deposited some weeks before the opening of the session. The second reading is usually granted as a matter of course; and after second reading, instead of being, like a public bill, considered in committee of the whole House, it goes (if opposed) to a private bill committee consisting (usually) of four members, who take evidence regarding it from the promoters and opponents, and hear counsel argue for and against its preamble and its clauses. In fact, the proceedings on private bills are to some extent of a judicial nature, although of course the committee must have regard to considerations of policy.

Pecuniary claims against the Government are in England not raised by way of private bill. They are presented in the courts by a proceeding called a petition of right, the Crown allowing itself to be sued by one of its subjects.

In America no such difference of treatment as the above exists between public and private bills; all are dealt with in substantially the same way by the usual legislative methods. A bill of a purely local or personal nature gets its second reading as a matter of course, like a bill of general application, is similarly referred to the appropriate committee (which may hear evidence regarding it, but does not hear counsel); is considered and if necessary amended by the committee, is, if time permits, reported back to the House, and there takes its chance among the jostling crowd of other bills, Fridays, however, being specially set apart for the consideration of private business. There is a calendar of private bills, and those which get a place early upon it have a chance of passing. A great many are unopposed, and can be hurried through by "unanimous consent."

Private bills are in Congress even more multifarious in their contents,

<sup>1</sup> The official distinction in the yearly editions of the Statutes is into Public General Acts, Public Acts of a local character (which include Provisional Order Acts and Local Acts), and Private Acts. But in ordinary speech, those measures which are brought in at the instance of particular persons for a local purpose are called private.

as well as incomparably more numerous, than in England, although they do not include the vast mass of bills for the creation or regulation of various public undertakings within a particular State, since these would fall within the province of the State legislature. They include three classes practically unknown in England, pension bills, which propose to grant a pension to some person (usually a soldier or his widow), bills for satisfying some claim of an individual against the Federal Government, and bills for dispensing in particular cases with a variety of administrative statutes. Matters which in England would be naturally left to be dealt with at the discretion of the executive are thus assumed by the legislature, which is (for reasons that will appear in later chapters) more anxious to narrow the sphere of the executive than are the ruling legislatures of European countries. I subjoin from the private bills of the session of 1880-81 some instances showing how wide is the range of congressional interference.

IN THE HOUSE OF REPRESENTATIVES

Read twice, referred to the Committee on Invalid Pensions, and ordered to be printed.

Mr. Murch introduced the following bill :—

A BILL

For the relief of James E. Gott.

*Be it enacted*

- 1 *By the Senate and House of Representatives of the*
- 2 *United States of America in Congress Assembled.*
- 3 That the Secretary of the Interior be, and he is hereby,
- 4 Authorized and directed to increase the pension of James E.
- 5 Gott, late a member of Company A, Fourteenth Regiment,
- 6 Maine Volunteers, to twenty-four dollars per month.

Read twice, referred to the Committee on War Claims, and ordered to be printed.

A BILL

For the relief of the heirs of George W. Hayes.

*Be it enacted,*

That the proper accounting officer of the Treasury be, and he is hereby, directed to pay to the heirs of George W. Hayes, of North Carolina, the sum of four hundred and fifty dollars, for three mules furnished the United States Army in eighteen hundred and sixty-four, for which they hold proper vouchers.

Read twice, and referred to the Committee on Naval Affairs.

A BILL

For the relief of Thomas G. Corbin.

*Be it enacted, etc.*

That the President of the United States be, and is hereby, authorized to restore Thomas G. Corbin, now a captain on the retired list of the

Navy, to the active list, and to take rank next after Commodore J. W. A. Nicholson, with restitution, from December twelfth, eighteen hundred and seventy-three, of the difference of pay between that of a commodore on the active list, on "waiting orders" pay, and that of a captain retired on half-pay, to be paid out of any money in the Treasury not otherwise appropriated.

Read twice, referred to the Committee on Ways and Means, and ordered to be printed.

Mr. Robinson introduced the following joint resolution:—

#### JOINT RESOLUTION

Authorizing the remission or refunding of duty on a painted-glass window from London, England, for All Souls' Church, in Washington, District of Columbia.

*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled.*

That the Secretary of the Treasury be, and he is hereby, authorized and directed to remit or refund, as the case may be, the duties paid or accruing upon a painted-glass window from London, England, for All Souls' Church, in Washington, District of Columbia, imported, or to be imported into Baltimore, Maryland, or other port.

### NOTE (B) TO CHAPTER XVI

#### THE LOBBY

"THE Lobby" is the name given in America to persons, not being members of a legislature, who undertake to influence its members, and thereby to secure the passing of bills. The term includes both those who, since they hang about the chamber, and make a regular profession of working upon members, are called "lobbyists," and those persons who on any particular occasion may come up to advocate, by argument or solicitation, any particular measure in which they happen to be interested. The name, therefore, does not necessarily impute any improper motive or conduct, though it is commonly used in what Bentham calls a dyslogistic sense.

The causes which have produced lobbying are easily explained. Every legislative body has wide powers of affecting the interests and fortunes of private individuals, both for good and for evil. It entertains in every session some public bills, and of course many more private (i.e. local or personal) bills, which individuals are interested in supporting or resisting. Such, for instance, are public bills imposing customs duties or regulating the manufacture or sale of particular articles (e.g. intoxicants, explosives), and private bills establishing railroad or other companies, or

granting public franchises, or (in State legislatures) altering the areas of local government, or varying the taxing or borrowing powers of municipalities. When such bills are before a legislature, the promoters and the opponents naturally seek to represent their respective views, and to enforce them upon the members with whom the decision rests. So far there is nothing wrong, for advocacy of this kind is needed in order to bring the facts fairly before the legislature.

Now both in America and in England it has been found necessary, owing to the multitude of bills and the difficulty of discussing them in a large body, to refer private bills to committees for investigation; and the legislature has in both countries formed the habit of accepting generally, though not invariably, the decisions of a committee upon the bills it has dealt with. America has, however, gone farther than England, for Congress refers all public bills as well as private bills to committees. And whereas in England private bills are dealt with by a semi-judicial procedure, the promoters and opponents appearing by professional agents and barristers, in America no such procedure has been created, either in Congress or in the State legislatures, and private bills are handled much like public ones. Moreover, the range of private bills is wider in America than in England, in respect that they are used to obtain the satisfaction of claims by private persons against the Government, (although there exists a Federal Court of Claims, and in some States the State permits itself to be sued) whereas in England such claims would either be brought before a law-court in the form of a Petition of Right, or, though this rarely happens, be urged upon the executive by a motion made in Parliament.

We see, therefore, that in the United States —

All business goes before committees, not only private bills but public bills, often involving great pecuniary interests.

To give a bill a fair chance of passing, the committee must be induced to report in favour of it.

The committees have no quasi-judicial rules of procedure, but inquire into and amend bills in their uncontrolled discretion, upon such evidence or other statements as they choose to admit or use.

Bills are advocated before committees by persons not belonging to any recognized and legally regulated body.

The committees, both in the State legislatures and in the Federal House of Representatives, are largely composed of new men, unused to the exercise of the powers entrusted to them.

It results from the foregoing state of facts that the efforts of the promoters and opponents of a bill will be concentrated upon the committee to which the bill has been referred; and that when the interests affected are large it will be worth while to employ every possible engine of influence. Such influence can be better applied by those who have skill and a tact matured by experience; for it is no easy matter to know how to handle a committee collectively and its members individually. Accordingly, a class of persons springs up whose profession it is to influence committees for or against bills. There is nothing necessarily illegitimate in doing so. As Mr. Spofford remarks: —

“What is known as lobbying by no means implies in all cases the use of money to affect legislation. This corruption is frequently wholly absent in cases where the lobby is most industrious, numerous, persistent, and successful. A measure which it is desired to pass into law, for the benefit of certain interests represented, may be urged upon members of the legislative body in every form of influence except the pecuniary one. By casual interviews, by informal conversation, by formal presentation of facts and arguments, by printed appeals in pamphlet form, by newspaper communications and leading articles, by personal introductions from or through men of supposed influence, by dinners, receptions, and other entertainments, by the arts of social life and the charms of feminine attraction, the public man is beset to look favourably upon the measure which interested parties seek to have enacted. It continually happens that new measures or modifications of old ones are agitated in which vast pecuniary interests are involved. The power of the law, which when faithfully administered is supreme, may make or unmake the fortunes of innumerable corporations, business firms, or individuals. Changes in the tariff duties, in the internal revenue taxes, in the banking system, in the mining statutes, in the land laws, in the extension of patents, in the increase of pensions, in the regulation of mail contracts, in the currency of the country, or proposed appropriations for steamship subsidies, for railway legislation, for war damages, and for experiments in multitudes of other fields of legislation equally or more important, come before Congress. It is inevitable that each class of interests liable to be affected should seek its own advantage in the result. When this is done legitimately, by presentation and proof of facts, by testimony, by arguments, by printed or personal appeals to the reason and sense of justice of members, there can be no objection to it.”<sup>1</sup>

Just as a plaintiff in a lawsuit may properly employ an attorney and barrister, so a promoter may properly employ a lobbyist. But there is plainly a risk of abuse. In legal proceedings, the judge and jury are bound to take nothing into account except the law and the facts proved in evidence. It would be an obvious breach of duty should a judge decide in favour of a plaintiff because he had dined with or been importuned by him (as in the parable), or received £50 from him. The judge is surrounded by the safeguards, not only of habit but of opinion, which would condemn his conduct and cut short his career were he to yield to any private motive. The attorney and barrister are each of them also members of a recognized profession, and would forfeit its privileges were they to be detected in the attempt to employ underhand influence. No such safeguards surround either the member of a committee or the lobbyist. The former usually comes out of obscurity, and returns to it; the latter does not belong to any disciplined profession. Moreover, the questions which the committee has to decide are not questions of law, nor always questions of fact, but largely questions of policy, on which reasonable men need not agree, and as to which it is often impossible to say

<sup>1</sup> Mr. A. R. Spofford (Librarian of Congress) in *American Cyclopædia of Political Science*, Article “Lobby.”

that there is a palpably right view or wrong view, because the determining considerations will be estimated differently by different minds.

These dangers in the system of private bill legislation made themselves so manifest in England, especially during the great era of railway construction some fifty years ago, as to have led to the adoption of the quasi-judicial procedure described in the Note on Private Bills, and to the erection of parliamentary agents into a regularly constituted profession, bound by professional rules. Public opinion has fortunately established the doctrine that each member of a private bill committee is to be considered as a quasi-judicial person, whose vote neither a brother member nor any outsider may attempt to influence, but who is bound to decide, as far as he can, in a judicial spirit on the footing of the evidence tendered. Of course practice is not up to the level of theory in Parliament any more than elsewhere; still there is little solicitation to members of committees, and an almost complete absence of even the suspicion of corruption.

"In the United States," says an experienced American publicist, whose opinion I have inquired, "though lobbying is perfectly legitimate in theory, yet the secrecy and want of personal responsibility, the confusion and want of system in the committees, make it rapidly degenerate into a process of intrigue, and fall into the hands of the worst men. It is so disagreeable and humiliating that all men shrink from it, unless those who are stimulated by direct personal interest; and these soon throw away all scruples. The most dangerous men are ex-members, who know how things are to be managed."

That this unfavourable view is the prevailing one, appears not merely from what one hears in society or reads in the newspapers, though in America one must discount a great deal of what rumour asserts regarding illicit influence, but from the constitutions and statutes of some States, which endeavour to repress it.

What has been said above applies equally to Congress and to the State legislatures, and to some extent also to the municipal councils of the great cities. All legislative bodies which control important pecuniary interests are as sure to have a lobby as an army to have its camp-followers. Where the body is, there will the vultures be gathered together. Great and wealthy States, like New York and Pennsylvania, support the largest and most active lobbies. It must, however, be remembered that although no man of good position would like to be called a lobbyist, still such men are often obliged to do the work of lobbying—i.e. they must dance attendance on a committee, and endeavour to influence its members for the sake of getting their measure through. They may have to do this in the interests of the good government of a city, or the reform of a charity, no less than for some private end.

The permanent professional staff of lobbyists at Washington is of course from time to time recruited by persons interested in some particular enterprise, who combine with one, two, or more professionals in trying to push it through. Thus there are at Washington, says Mr. Spofford, "pension lobbyists, tariff lobbyists, steamship subsidy lobbyists, railway

lobbyists, Indian ring lobbyists, patent lobbyists, river and harbour lobbyists, mining lobbyists, bank lobbyists, mail-contract lobbyists, war damages lobbyists, back-pay and bounty lobbyists, Isthmus canal lobbyists, public building lobbyists, State claims lobbyists, cotton-tax lobbyists, and French spoliations lobbyists. Of the office-seeking lobbyists at Washington it may be said that their name is legion. There are even artist lobbyists, bent upon wheedling Congress into buying bad paintings and worse sculptures; and too frequently with success. At times in our history there has been a British lobby, with the most genteel accompaniments, devoted to watching legislation affecting the great importing and shipping interests."

A committee whose action can affect the tariff is of course surrounded by a strong lobby.<sup>1</sup> I remember to have heard an anecdote of a quinine manufacturer, who had kept a lawyer as his agent to "look after" a committee during a whole session, and prevent them from touching the duty on that drug. On the last day of sitting the agent went home, thinking the danger past. As soon as he had gone, the committee suddenly recommended an alteration of the duty, on the impulse of some one who had been watching all the time for his opportunity.

Women are said to be among the most active and successful lobbyists at Washington.

Efforts have been made to check the practice of lobbying, both in Congress and in State legislatures. Statutes have been passed severely punishing any person who offers any money or value to any member with a view to influence his vote.<sup>2</sup> It has been repeatedly held by the courts that "contracts which have for their object to influence legislation in any other manner than by such open and public presentation of facts, arguments, and appeals to reason, as are recognized as proper and legitimate with all public bodies, must be held void."<sup>3</sup> It has also been

<sup>1</sup> The phrase one often hears "there was a strong lobby" (*i.e.* for or against such and such a bill) denotes that the interests and influences represented were numerous and powerful.

<sup>2</sup> As to Congress, see § 5450 of Revised Statutes of the United States. The provisions of State Statutes are too numerous to mention. See p. 462. Massachusetts has recently endeavoured by Statute to regulate her State lobby, with what success seems still doubtful.

<sup>3</sup> Cooley, *Constit. Limit.*, p. 166. He refers to the observations of Justice Chapman, in *Frost v. Belmont*, 6 Allen, 152:—

"Though Committees properly dispense with many of the rules which regulate hearings before judicial tribunals, yet common fairness requires that neither party shall be permitted to have secret consultations and exercise secret influences that are kept from the knowledge of the other party. The business of 'lobby members' is not to go fairly and openly before the committees and present statements, proofs, and arguments, that the other side has an opportunity to meet and refute if they are wrong, but to go secretly to the members and ply them with statements and arguments that the other side cannot openly meet, however erroneous they may be, and to bring illegitimate influences to bear upon them. If the 'lobby member' is selected because of his political or personal influence, it aggravates the wrong. If his business is

suggested that a regular body of attorneys, authorized to act as agents before committees of Congress, should be created. A bill for this purpose was laid before the Senate in January 1875.

## NOTE TO CHAPTER XXVII

### THE FEDERAL SYSTEM OF THE ENGLISH UNIVERSITIES

The structure of the American Federation may be illustrated by a federal system familiar to many Englishmen from its existence in the two ancient universities of Oxford and Cambridge, as they stood constituted twenty-five years ago. The analogy, which recent legislation has rendered less perfect to-day than it was then, appears in four points.

I. Each of these universities was then for some purposes a federation of colleges. Every member of it was also a member of some college or hall;<sup>1</sup> as no one can be an active citizen of the United States who is not a citizen of some State. The colleges made up the university as the States make up the Union. But the university was and is something distinct from the colleges taken together. It has a sphere of its own, laws of its own, a government of its own, a revenue and budget of its own. So has each of the colleges. Each member has two patriotisms, that of his college, that of the university; just as each American citizen has his State patriotism as well as his national patriotism.

II. The university has a direct and immediate jurisdiction over every one of its members, distinct from the jurisdiction exercised by the colleges over the same persons. An offender may be punished for certain offences by a university tribunal, for certain others by a college tribunal, for some by both tribunals. So every citizen lives under the jurisdiction of the Union as well as under that of his State.

to unite various interests by means of projects that are called 'log-rolling,' it is still worse. The practice of procuring members of the legislature to act under the influence of what they have eaten and drunk at houses of entertainment tends to render those who yield to such influences wholly unfit to act in such cases."

<sup>1</sup> By a recent statute of the University of Oxford (which I take for the sake of simplicity), reverting to its earlier constitution before the college monopoly had been established, persons have been admitted to be members who are not members of any college or hall; they are, however, treated for some purposes as collectively constituting a community similar to a college. They might be compared to United States citizens resident in the Territories, were it not that the citizen in a Territory enjoys no share in the national government, whereas the Oxford non-collegiate graduate can vote in Convocation and Congregation and for the election of members of Council.

There is of course this remarkable difference between the two cases I am comparing, that in the English universities the university is older than the colleges, whereas in America the States are older than the nation. The federal character of Oxford dates only from the time of Archbishop Laud.

III. The governing authorities of the university are created partly by the direct action of its members as graduates, partly by that of the colleges as communities. So in America Congress is created partly by the citizens as citizens, partly by the States as communities. Before the reforms of 1854 the part played by the colleges was much greater than it is now, because the Council, which is a sort of Upper House of the university legislature, consisted entirely of heads of colleges.

IV. The university has very little authority over the colleges as corporations, and indeed scarcely comes in contact with them all. Under a recent statute they are obliged to make certain contributions to the university, and to send a copy of their accounts to a university office. But they are self-governing; the university cannot interfere with their internal management, nor with the exercise of their jurisdiction over their members, which is their own and not delegated by it. So the States exercise an original and not a delegated authority over their citizens, and cannot be controlled by the national government in respect of all those numerous matters as to which the Constitution leaves them free.

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#### NOTE (A) TO CHAPTER XXX

##### CONSTITUTION OF THE CONFEDERATE STATES, 1861-65

THE Constitution adopted 11th March 1861 by the Slave States which seceded from the Union and formed the short-lived Southern Confederacy, was a reproduction of the Federal Constitution of 1788-89, with certain variations interesting because they show the points in which the States' Rights party thought the Federal Constitution defective as inadequately safeguarding the rights of the several States, and because they embody certain other changes which have often been advocated as likely to improve the working of that instrument.

The most important of these variations are the following:—

Art. I. § 2. A provision is inserted permitting the impeachment of a Federal officer acting within the limits of any State by a vote of two-thirds of the legislature thereof.

Art. I. § 6. There is added: "Congress may by law grant to the principal officer in each of the executive departments, a seat upon the floor of either House, with the privilege of discussing any measure appertaining to his department."

Art. I. § 7. The President is permitted to veto any particular item or items in an appropriation bill.

Art. I. § 8. The imposition of protective duties and the granting of bounties on industry are forbidden, and the granting of money for internal improvements is strictly limited.

Art. I. § 9. Congress is forbidden to appropriate money from the Treasury, except by a vote of two-thirds of both Houses, unless it be asked by the head of a department and submitted by the President, or be for the payment of its

own expenses, or of claims against the Confederacy declared by a judicial tribunal to be just.

Art. ii. § 1. The President and Vice-President are to be elected for six years, and the President is not to be re-eligible.

Art. ii. § 2. The President is given power to remove the highest officials at his pleasure, and others for good cause, reporting the removals to the Senate.

Art. v. The process for amending the Constitution is to be by a Convention of all the States, followed by the ratification of two-thirds of the States.

Of these changes, the third and fifth were obvious improvements; and much may be said in favour of the second, seventh, and eighth. The second was a slight approximation towards the Cabinet system of England.<sup>1</sup>

I omit the important changes relating to slavery, which was fully protected, because these have only a historical interest.

The working of the Constitution of the Confederate States cannot be fairly judged, because it was conducted under the exigencies of a war, which necessarily gave it a despotic turn. The executive practically got its way. Congress usually sat in secret and "did little beyond register laws prepared by the executive, and debate resolutions for the vigorous conduct of the war. Outside of the ordinary powers conferred by the legislature, the war powers openly or practically exercised by the executive were more sweeping and general than those assumed by President Lincoln."—(Alexander Johnston in *American Cyclopædia of Political Science*, Art. "Confederate States.")

## NOTE (B) TO CHAPTER XXX

### THE FEDERAL CONSTITUTION OF CANADA

THE Federal Constitution of the Dominion of Canada is contained in the British North America Act 1867, a statute of the British Parliament (30 Vict. c. 3).<sup>2</sup> I note a few of the many points in which it deserves to be compared with that of the United States.

The Federal or Dominion Government is conducted on the so-called "Cabinet system" of England, i.e. the Ministry sit in Parliament, and

<sup>1</sup> A singular combination of the Presidential with the Cabinet system may be found in the present Constitution of the Hawaiian kingdom, promulgated 7th July 1887. Framed under the influence of American traditions, it keeps the Cabinet, which consists of four ministers, out of the legislature, but having an irresponsible hereditary monarch, it is obliged to give the legislature the power of dismissing them by a vote of want of confidence. The legislature consists of two sets of elective members, Nobles (unpaid), and Representatives (paid), who sit and vote together. Two successive legislatures can alter the Constitution by certain prescribed majorities: the Constitution is therefore a Rigid one.

<sup>2</sup> See also 34 & 35 Vict. c. 28, and 49 and 50 Vict. c. 35.

hold office at the pleasure of the House of Commons. The Governor-General is in the position of an irresponsible and permanent executive similar to that of the Crown in Great Britain, acting on the advice of responsible ministers. He can dissolve Parliament. The Upper House or Senate is composed of 78 persons, nominated for life by the Governor-General, *i.e.* the Ministry. The House of Commons has at present 210 members, who are elected for five years. Both senators and members receive salaries. The Senate has very little power or influence. The Governor-General has a veto but rarely exercises it, and may reserve a bill for the Queen's pleasure. The judges, not only of the Federal or Dominion Courts, but also of the Provinces, are appointed by the Crown, *i.e.* by the Dominion Ministry, and hold for good behaviour.

Each of the Provinces, at present seven in number, has a legislature of its own, which, however, consists in Ontario, British Columbia, Manitoba, and New Brunswick, of one House only, and a Lieutenant-Governor, appointed by the Dominion Government, with a right of veto on the acts of the legislature, which he seldom exercises. Members of the Dominion Parliament cannot sit in a Provincial legislature.

The Governor-General has a right of disallowing acts of a Provincial legislature, and sometimes exerts it, especially when a legislature is deemed to have exceeded its constitutional competence.

In each of the Provinces there is a responsible Ministry, working on the Cabinet system of England, the Lieutenant-Governor representing the Crown and acting as a sort of constitutional sovereign.

The distribution of matters within the competence of the Dominion Parliament and of the Provincial legislatures respectively, bears a general resemblance to that existing in the United States; but there is this remarkable distinction, that whereas in the United States, Congress has only the powers actually granted to it, the State legislatures retaining all such powers as have not been taken from them, the Dominion Parliament has a general power of legislation, restricted only by the grant of certain specific and exclusive powers to the Provincial legislatures (§§ 91-95). Criminal law is reserved for the Dominion Parliament; and no province has the right to maintain a military force. Questions as to the constitutionality of a statute, whether of the Dominion Parliament or of a Provincial legislature, come before the courts in the ordinary way, and if appealed, before the Judicial Committee of the Privy Council in England.

The Constitution of the Dominion was never submitted to popular vote, and can be altered only by the British Parliament, except as regards certain points left to its own legislature. It was drafted by a sort of convention in Canada, and enacted *en bloc* by the British Parliament. There exists no power of amending the Provincial constitutions by popular vote similar to that which the people of the several States exercise in the United States.

## NOTE TO CHAPTER XXXIII

## THE DARTMOUTH COLLEGE CASE

THE famous case of *Dartmouth College v. Woodward* (4 Wheat. 518) decided in 1818, has been so often brought up in European discussions, that it seems proper to give a short account of it, taken from an authoritative source, an address by the late Mr. Justice Miller (then senior justice, and one of the most eminent members, of the Supreme court), delivered before the University of Michigan, June 1887.

"It may well be doubted whether any decision ever delivered by any court has had such a pervading operation and influence in controlling legislation as this. It is founded upon the clause of the Constitution (Art. I. § 10) which declares that no State shall make any law impairing the obligation of contracts.

"Dartmouth College existed as a corporation under a charter granted by the British crown to its trustees in New Hampshire, in the year 1769. This charter conferred upon them the entire governing power of the college, and among other powers that of filling up all vacancies occurring in their own body, and of removing and appointing tutors. It also declared that the number of trustees should for ever consist of twelve and no more.

"After the Revolution, the legislature of New Hampshire passed a law to amend the charter, to improve and enlarge the corporation. It increased the number of trustees to twenty-one, gave the appointment of the additional members to the executive of the State, and created a board of overseers to consist of twenty-five persons, of whom twenty-one were also to be appointed by the executive of New Hampshire. These overseers had power to inspect and control the most important acts of the trustees.

"The Supreme court, reversing the decision of the Superior court of New Hampshire, held that the original charter constituted a contract between the crown, in whom the power was then vested and the trustees of the college, which was impaired by the act of the legislature above referred to. The opinion, to which there was but one dissent, establishes the doctrine that the act of a government, whether it be by a charter of the legislature or of the crown, which creates a corporation, is a contract between the state and the corporation, and that all the essential franchises, powers, and benefits conferred upon the corporation by the charter become, when accepted by it, contracts within the meaning of the clause of the Constitution referred to.

"The opinion has been of late years much criticised, as including with the class of contracts whose foundation is in the legislative action of the States, many which were not properly intended to be so included by the framers of the Constitution, and it is undoubtedly true that the Supreme court itself has been compelled of late years to insist in this class of cases upon the existence of an actual contract by the State with the corporation, when relief is sought against subsequent legislation.

"The main feature of the case, namely that a State can make a con-

tract by legislation, as well as in any other way, and that in no such case shall a subsequent act of the legislature interpose any effectual barrier to its enforcement, where it is enforceable in the ordinary courts of justice, has remained. The result of this principle has been to make void innumerable acts of State legislatures, intended in times of disastrous financial depression and suffering to protect the people from the hardships of a rigid and prompt enforcement of the law in regard to their contracts, and to prevent the States from repealing, abrogating, or avoiding by legislation contracts fairly entered into with other parties.

"This decision has stood from the day it was made to the present hour as a great bulwark against popular effort through State legislation to evade the payment of just debts, the performance of obligatory contracts, and the general repudiation of the rights of creditors."

As here intimated, the broad doctrine laid down in this case has been of late years considerably qualified and restricted. It has also become the practice for States making contracts by grants to which the principle of this decision could apply, to reserve power to vary or annul them, so as to leave the hands of the State free.

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#### NOTE TO CHAPTER XLIX

*Specimens of Provisions in State Constitutions limiting the taxing and borrowing powers of State Legislatures and local authorities*

##### ARKANSAS: CONSTITUTION OF 1874

ARTICLE XVI. Section 1. Neither the State nor any city, county, town, or other municipality in this State shall ever loan its credit for any purpose whatever. Nor shall any county, city, town, or other municipality ever issue any interest bearing evidences of indebtedness, except such bonds as may be authorized by law to provide for and secure the payment of the present existing indebtedness, and the State shall never issue any interest-bearing treasury warrants or scrip.

Section 7. No city, town, or other municipal corporation other than provided for in this article, shall levy or collect a larger rate of taxation in any one year on the property thereof than one-half of one per centum of the value of such property as assessed for State taxation during the preceding year.

##### COLORADO: CONSTITUTION OF 1875

ARTICLE XI. Section 7. No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings or purchasing grounds, unless the proposition to create such debt shall first be submitted to such qualified electors of the districts as shall have paid a school tax therein in the year next preceding such

election, and a majority of those voting thereon shall vote in favour of incurring such debt.

Section 8. No city or town shall contract any debt by loan in any form, except by means of an ordinance, which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied, and providing for the levy of a tax, not exceeding twelve mills on each dollar of valuation of taxable property within such city or town, sufficient to pay the annual interest and extinguish the principal of such debt within fifteen, but not less than ten years from the creation thereof; and such tax, when collected, shall be applied only to the purposes in such ordinance specified until the indebtedness shall be paid or discharged; but no such debt shall be created unless the question of incurring the same shall, at a regular election for councilmen, aldermen, or officers of such city or town, be submitted to a vote of such qualified electors thereof as shall, in the year next preceding, have paid a property-tax therein, and a majority of those voting on the question, by ballot deposited in a separate ballot box, shall vote in favour of creating such debt; but the aggregate amount of debt so created, together with the debt existing at the time of such election, shall not at any time exceed three per cent of the valuation last aforesaid. Debts contracted for supplying water to such city or town are excepted from the operation of this section.

#### ILLINOIS: CONSTITUTION OF 1870

ARTICLE IX. Section 8. County authorities shall never assess taxes, the aggregates of which shall exceed seventy-five cents per one hundred dollars valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.

Section 12. No county, city, township, school district, or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for the State and county taxes previous to the incurring of such indebtedness.

Any county, city, school district, or other municipal corporation incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

#### CALIFORNIA: CONSTITUTION OF 1879

ARTICLE XI. Section 18. No county, city, town, township, Board of Education, or school district shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two-thirds of

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the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

**NEW YORK: CONSTITUTIONAL AMENDMENT OF 1884**  
(to Art. viii. § 11 of Constitution of 1846)

No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation.

The amount hereafter to be raised by tax for county or city purposes in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real personal estate of such county or city.

## ARTICLES OF CONFEDERATION, 1781-1788

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*Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

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

ART. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties, or restriction, shall be laid by any State on the property of the United States, or either of them.

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

Full faith and credit shall be given, in each of these States, to the

records, acts, and judicial proceedings of the courts and magistrates of every other State.

**Art. V.** For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

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

Each State shall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress ; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

**Art. VI.** No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state ; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state ; nor shall the United States, in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No States shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State or its trade ; nor shall any body of forces be kept up by any State, in time of peace, except such number only as, in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State ; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public

stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States, in Congress assembled, unless such State be invested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

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

member of Congress shall be appointed as judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal, in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned; provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection, or hope of reward." Provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined,

as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the States; provided that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be required to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

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

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

ART. X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine States, in the Congress of the United States assembled, is requisite.

ART. XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

*And whereas* it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual. In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

[These Articles were not ratified by all the States until 1st March 1781, when the delegates of Maryland, the latest in ratifying, signed for her.]

## CONSTITUTION OF THE UNITED STATES

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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.

SEC. 2. 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.

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.

[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 choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

<sup>1</sup> The clause included in brackets is amended by the XIVth Amendment, 2d section.

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

The House of Representatives shall choose their speaker and other officers ; and shall have the sole power of impeachment.

SEC. 3. 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.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year ; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The 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.

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.

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

SEC. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof ; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

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.

SEC. 5. 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.

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.

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.

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.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

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.

SEC. 7. 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.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

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.

Sec. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

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

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads.

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;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

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;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

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.

Sec. 9. The migration or importation of such persons as any of the

States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

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.

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

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

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.

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.

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.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

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

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but

no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The 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 choose 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 choose 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. 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 choose from them, by ballot, the Vice-President.]<sup>1</sup>

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.

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.

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

The 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.

Before he enter on the execution of his office, he shall take the following oath or affirmation :

<sup>1</sup> This clause in brackets has been superseded by the XIIth Amendment.

"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."

Sec. 2. 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.

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.

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.

Sec. 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.

Sec. 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 misdemeanours.

### 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.

Sec. 2. 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.

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.

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.

SEC. 3. 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 Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

#### ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

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.

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.

SEC. 3. New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the jurisdiction of any other State ; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

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

SEC. 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

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.

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.

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

#### ARTICLE VII

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

Done in Convention by the unanimous consent of the States present,<sup>1</sup>

<sup>1</sup> Rhode Island was not represented. Several of the delegates had left the Convention before it concluded its labours, and some others who remained refused to sign. In all, 65 delegates had been appointed, 55 attended, 30 signed.

The first ratification was that of Delaware, Dec. 7, 1787 ; the ninth (bringing the Constitution into force) that of New Hampshire, June 21, 1788 ; the last, that of Rhode Island, May 29, 1790.

the Seventeenth day of September, in the year of our Lord 1787, and of the Independence of the United States of America the Twelfth.

IN WITNESS whereof we have hereunto subscribed our names.

G<sup>o</sup> WASHINGTON,  
*Presidt. and Deputy from Virginia.*

*New Hampshire*—John Langdon, Nicholas Gilman. *Massachusetts*—Nathaniel Gorham, Rufus King. *Connecticut*—Wm. Saml. Johnson, Roger Sherman. *New York*—Alexander Hamilton. *New Jersey*—Wil. Livingston, Wm. Paterson, David Brearley, Jona. Dayton. *Pennsylvania*—B. Franklin, Thos. Fitzsimons, Thomas Mifflin, Jared Ingersoll, Robt. Morris, James Wilson, Geo. Clymer, Gouv. Morris. *Delaware*—Geo. Read, Richard Bassett, Gunning Bedford, Jun., Jaco. Broom, John Dickinson. *Maryland*—James M'Henry, Dan. Carroll, Dan. Jenifer, of St. Thomas. *Virginia*—John Blair, James Madison, Jun. *North Carolina*—Wm. Blount, Hugh Williamson, Rich'd Dobbs Spaight. *South Carolina*—J. Rutledge, Charles Pinckney, Charles Cotesworth Pinckney, Pierce Butler. *Georgia*—William Few, Abr. Baldwin.

*Attest: WILLIAM JACKSON, Secretary*

*Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.*

#### ARTICLE I<sup>1</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 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 the time of war, but in a manner to be prescribed by law.

#### ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be vio-

<sup>1</sup> Amendments I-X inclusive were proposed by Congress to the Legislatures of the States, Sept. 25, 1789, and ratified 1789-91.

lated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### ARTICLE V

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

#### ARTICLE VI

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

<sup>1</sup> Amend. XI was proposed by Congress Sept. 5, 1794, and declared to have been ratified by the legislatures of three-fourths of the States, Jan. 8, 1798.

<sup>2</sup> Amend. XII was proposed by Congress Dec. 12, 1803, and declared to have been ratified Sept. 25, 1804.

ARTICLE XIII<sup>1</sup>

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

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

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.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 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.

SEC. 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

<sup>1</sup> Amendt. XIII was proposed by Congress Feb. 1, 1865, and declared to have been ratified by 27 of the 36 States, Dec. 18, 1865.

<sup>2</sup> Amendt. XIV was proposed by Congress June 16, 1866, and declared to have been ratified by 30 of the 36 States, July 28, 1868.

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.

SEC. 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 by any State on account of race, colour, or previous condition of servitude.

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

<sup>1</sup> Amendt. XV was proposed by Congress Feb. 26, 1869, and declared to have been ratified by 29 of the 37 States, March 30, 1870.

# EXTRACTS FROM THE CONSTITUTION OF THE STATE OF CALIFORNIA <sup>1</sup>

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Adopted in Convention at Sacramento, March 3, A.D. 1879; submitted to  
and ratified by the People, May 7, 1879.

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## PREAMBLE AND DECLARATION OF RIGHTS

### PREAMBLE

WE, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

### ARTICLE I

#### DECLARATION OF RIGHTS

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or the safety of the State.

<sup>1</sup> I take these extracts (being unable to find space for the whole document) from the official edition of 1887, which contains a few amendments made since 1879.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require the suspension.

Sec. 6. All persons shall be bailable by sufficient sureties unless for capital offences when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

Sec. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three-fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to felony, by the consent of both parties, expressed in open Court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanour, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open Court.

Sec. 8. Offences heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

Sec. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or informations laid, for publication in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libelled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

Sec. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

Sec. 11. All laws of a general nature shall have a uniform operation.

Sec. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

Sec. 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offence; nor be compelled, in any

criminal case, to be a witness against himself ; nor be deprived of life, liberty, or property without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other causes, will not attend at the trial.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into Court for, the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a Court of record, as shall be prescribed by law.

Sec. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in case of fraud, nor in civil actions for torts, except in cases of wilful injury to person or property ; and no person shall be imprisoned for a militia fine in time of peace.

Sec. 16. No bill of attainder, *ex post facto* law, or law impairing the obligations of contracts, shall ever be passed.

Sec. 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native born citizens.

Sec. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

Sec. 19. The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated ; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Sec. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court.

Sec. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature, nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

Sec. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Sec. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

Sec. 24. No property qualification shall ever be required for any person to vote or hold office.

## ARTICLE IV

## LEGISLATIVE DEPARTMENT

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:—

*First*—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

*Second*—For the punishment of crimes and misdemeanours.

*Third*—Regulating the practice of courts of justice.

*Fourth*—Providing for changing the venue in civil or criminal actions.

*Fifth*—Granting divorces.

*Sixth*—Changing the names of persons or places.

*Seventh*—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plots, parks, cemeteries, graveyards, or public grounds not owned by the State.

*Eighth*—Summoning and impanelling grand and petit juries, and providing for their compensation.

*Ninth*—Regulating county and township business, or the election of county or township officers.

*Tenth*—For the assessment or collection of taxes.

*Eleventh*—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

*Twelfth*—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

*Thirteenth*—Extending the time for the collection of taxes.

*Fourteenth*—Giving effect to invalid deeds, wills, or other instruments.

*Fifteenth*—Refunding money paid into the State Treasury.

*Sixteenth*—Releasing, or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

*Seventeenth*—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

*Eighteenth*—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

*Nineteenth*—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

*Twentieth*—Exempting property from taxation.

*Twenty-first*—Changing county seats.

*Twenty-second*—Restoring to citizenship persons convicted of infamous crimes.

*Twenty-third*—Regulating the rate of interest on money.

*Twenty-fourth*—Authorizing the creation, extension, or impairing of liens.

*Twenty-fifth*—Chartering or licensing ferries, bridges, or roads.

*Twenty-sixth*—Remitting fines, penalties, or forfeitures.

*Twenty-seventh* — Providing for the management of common schools.

*Twenty-eighth* — Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, township, election, or school districts.

*Twenty-ninth* — Affecting the fees or salary of any officer.

*Thirtieth* — Changing the law of descent or succession.

*Thirty-first* — Authorizing the adoption or legitimization of children.

*Thirty-second* — For limitation of civil or criminal actions.

*Thirty-third* — In all other cases where a general law can be made applicable.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and for ever disqualified from holding any office of public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offence of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

## ARTICLE XII

### CORPORATIONS

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

Sec. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Sec. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of such director or trustee.

Sec. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

Sec. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put into circulation, as money, anything but the lawful money of the United States.

Sec. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and *bona fide* organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

Sec. 7. The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter, of any corporation now existing, or which shall hereafter exist under the laws of this State.

Sec. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

Sec. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

Sec. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Sec. 11. No corporation shall issue stock or bonds, except for money paid, labour done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebted-

ness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days public notice, as may be provided by law.

SEC. 12. In all elections for directors or managers of corporations every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he may think fit; and such directors or managers shall not be elected in any other manner, except that members of co-operative societies formed for agricultural, mercantile, and manufacturing purposes may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The State shall not in any manner loan its credit, nor shall it subscribe to or be interested in the stock of any company, association, or corporation.

SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection, by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favourable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SEC. 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business

of transportation as a common carrier of freight or passengers over the works owed, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honour, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SEC. 22. The State will be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take

testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offence; and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

Sec. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

### ARTICLE XIII

#### REVENUE AND TAXATION

SECTION 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; *provided*, that growing crops, property used exclusively for public schools, and such as may belong to

the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in case of credits secured by mortgage or trust deed, for a reduction from credits of debts due *bona fide* residents of this State.

Sec. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

Sec. 3. Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States Government.

Sec. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy of the preceding year.

Sec. 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

Sec. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

Sec. 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by instalments.

Sec. 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian on the first Monday of March.

Sec. 9. A State Board of Equalization, consisting of one member from each Congressional District in this State, as the same existed in

eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be *ex officio* a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no Board of Equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State Board of Equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts, as nearly equal in population as practical, and to provide for the election of members of said Board of Equalization. [Amendment, adopted November 4, 1884.]

SEC. 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts and in such manner, as shall be prescribed by law.

SEC. 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 13. The Legislature shall pass all laws necessary to carry out the provisions of this article.

## ARTICLE XIV

## WATER AND WATER RIGHTS

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city, or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or City and County, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation to the city and county, or city or town, where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensate for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

## ARTICLE XV

## HARBOUR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbour, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision so that access to the navigable waters of this State shall be always attainable for the people thereof.

SEC. 3. All tide lands within two miles of any incorporated city or

town of this State and fronting on the waters of any harbour, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

## ARTICLE XVI

### STATE INDEBTEDNESS

**SECTION 1.** The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

## ARTICLE XVII

### LAND AND HOMESTEAD EXEMPTION

**SECTION 1.** The Legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

**Sac. 2.** The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

**Sac. 3.** Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

## ARTICLE XIX

## CHINESE

SECTION 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and provide the means and mode of their removal from the State, upon failure and refusal to comply with such conditions; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

SEC. 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is for ever prohibited in this State, and all contracts for coolie labour shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labour, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of the Constitution. This section shall be enforced by appropriate legislation.