The Constitution of the United States at the End of One Hundred Fifty Years

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Including the original Constitution, the formal amendments, and that part of the Constitution made by the Supreme Court and custom, as found in the Supreme Court Reports, arranged so far as possible according to the analysis found in the original Constitution.
Explanatory Note

At the present time most informed people know that the greater part of our United States Constitution is not found in the printed document generally distributed as our United States Constitution, but is found in the Supreme Court Reports and is the work of the United States Supreme Court. In the Constitution published herewith as our entire United States Constitution all that part of the Constitution which has through the years been buried in the Supreme Court Reports has been dug out and incorporated as a part of our real United States Constitution, as, of course, it is. It is the thought of the author and the publisher that this part of the Constitution should be made available for the general public. Children in our public schools and students in our colleges and universities have been led to believe that our United States Constitution is just what they have found in the documents distributed as such. Some parts of this Constitution are obsolete; some parts are inaccurate unless interpreted; some parts have been modified and added to; and other new parts not referred to at all are parts of the Constitution just as much as the parts so named. It is, of course, impossible for the future citizens of the United States ever to obtain a correct and adequate idea of our fundamental law by studying such a document. It is believed that the present document will both fill a very great need and exert a very wholesome and useful influence not only upon the thinking of our citizens but also upon their relations to their government.

The United States Constitution has hereinafter been brought down only to the one-hundred-and-fiftieth anniversary of its adoption, that is, to March 4, 1939. Any changes therein made by the Supreme Court since such date, and there have already been many—as for example the change in income taxation of judges’ salaries, the change in the multiple taxation of intangibles, and the change as to questions of amendment being political instead of judicial—are not incorporated in this document, but have been noted in the Addendum, pages 71, 72.

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INTRODUCTION: THE SUPREME COURT AS CONSTITUTION-MAKER

A perusal of our Constitution, not as it left the Constitutional Convention nor as it has been amended by formal amendments, but as it is today after 150 years of history, reveals the United States Supreme Court as performing a very important function in Constitution making. This perhaps is one of the most significant things in connection with our real Constitution. The work of the United States Supreme Court in this respect is so important that it may truly be said that our Constitution is “what the Supreme Court says it is.”

The United States Constitution is a result of an effort to create an instrumentality which would render the maximum assistance towards evolving an ideal social order. In the work of creating this Constitution there have been encountered throughout our constitutional history seven main constitutional problems. These are:

(1) Who in the United States shall be sovereign?
(2) Shall the Constitution be subject to amendment and, if so, how?
(3) Shall the government created by the Constitution be a league of states, a central government, or a dual form of government?
(4) Shall there be a division of governmental powers for the United States government?
(5) Shall supremacy be vested in one of the branches of the federal government and, if so, which?
(6) How extensive shall citizenship and suffrage be in the United States?
(7) How much protection shall personal liberty have against social control?
The scope of the work of the United States Supreme Court can quickly be set forth. Our whole Constitution can be broken down, or divided, into seven great constitutional doctrines. The Constitution contains specific provisions too numerous to mention, but all of these provisions are included in one or the other of the seven great constitutional doctrines. These doctrines are: sovereignty of the people as a whole, amendability, dual form of government, separation of powers, supremacy of the Supreme Court, universal citizenship and suffrage, and the protection of personal liberty against unreasonable social control. They are the answers to the problems mentioned above.

Many provisions in the Constitution can in their origin be traced back to the English Revolution of 1688 and one to Magna Charta. Further background for many constitutional provisions can be found in such matters of colonial history as the Articles of Confederation of the New England colonies in 1643, the defense measures against the five nations in 1684, William Penn's plan of union for all the colonies in 1697, the gathering of commissioners from seven colonies in 1754, the Declaration of Rights in 1765, the meeting of delegates in Philadelphia in 1774 and 1775, the adoption of the Articles of Confederation in 1777 and 1781, the transfer to Congress of the Northwest Territory, and the experience in the Revolutionary War. But none of the doctrines of our Constitution were formulated prior to the Constitutional Convention. The Constitutional Convention placed in our original Constitution the doctrine of separation of powers and the doctrine of amendability of the Constitution. The formal amendments, especially those called the Bill of Rights, placed in our Constitution the doctrine of the protection of personal liberty against unreasonable social control; and the later amendments created the doctrine of universal citizenship and suffrage.

Three of the greatest doctrines of our Constitution were not created in either one of the above ways but by the work of the Supreme Court. These are the doctrines of sovereignty of the people as a whole, dual form of government, and the supremacy of the Supreme Court, or of judicial review. However, the work
of the Supreme Court in making our Constitution did not stop with the creation of these three doctrines. The other four doctrines, although not placed in the Constitution by the Supreme Court, are today very largely the result of the work of the Supreme Court. The doctrine of separation of powers, the doctrine of universal citizenship and suffrage, the doctrine of amendability, and the doctrine of protection of personal liberty against unreasonable social control are not today what they were originally thought to be at the time they were placed in our Constitution either by the Constitutional Convention or by formal amendments, but they are what the Supreme Court says they are after it has modified their original meaning, interpolated new provisions, and read in its own meaning and interpretation. It would probably not be too strong a statement to say that more than one-half of our present Constitution is the work of the Supreme Court.

People generally do not realize this fact because that part of the Constitution made by the Supreme Court is not found in the usual printed copies of our Constitution distributed as our Constitution, but is found scattered throughout three hundred volumes of the decisions of the United States Supreme Court, and thus it is not available for general reading. Probably as much of our Constitution is found in the formal amendments as in the original Constitution, but more of our Constitution is found in the decisions of the Supreme Court than in both of these other places.

Throughout our judicial history the justices of the Supreme Court have not always agreed as to the constitutional provisions and doctrines which they should read into our Constitution. Our constitutional history has not always tended in one general direction, but it has tended to move forward and backward as now one viewpoint and now another has prevailed. There have been many conflicting viewpoints of different justices of the Supreme Court. They have differed over practically all of our constitutional doctrines. Some have wanted one kind of a dual form of government and others an-
other. Some have wanted one kind of separation of powers and others another. Some have wanted the Supreme Court to have more power and others less power. Some have wanted kinds of doctrines of universal citizenship and suffrage and of the protection of personal liberty against unreasonable social control different from those which others wanted. The greatest conflict between the justices has probably arisen over the extent of constitutional protection which should be extended to business under the doctrine of the protection of personal liberty against unreasonable social control. This conflict has continued throughout the whole of our constitutional history. Other conflicts have been as serious as this for a short time. The conflict over the slavery issue was such a one. But no other conflict has continued for so long a time as that which related to the protection of business.

The work of the Supreme Court as a Constitution-maker and the operation of these conflicts within the Supreme Court can best be described by dividing our constitutional history into eight periods: the first period, that of the Constitutional Convention or the original Constitution; the second period, that of the Bill of Rights; the third period, that which may be called the period of Chief Justice Marshall, which extended from the time of the Bill of Rights up to our Civil War; the fourth period, which may be called that of Miller and Waite, which extended from the time of our Civil War up to the eighties; the fifth period, which may be called that of Field, Fuller, and Peckham, which extended from the eighties up until about 1910; the sixth period, which may be called that of Holmes, Brandeis, Hughes, and Stone, which extended from 1910 to 1922; the seventh period, which may be called that of McReynolds, Butler, Sutherland, and Van Devanter, which extended from 1922 to 1936; and the eighth period, which may be called that of Cardozo, Brandeis, and Stone, since 1936. The last six periods are all judicial periods.

The justices who dominated the third, fifth, and seventh periods had about the same viewpoint as to what constitutional
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protection should be given to business; and that viewpoint was that it should be given great protection. In the time of John Marshall this was largely through the contract clause but partly through the commerce clause. In the time of Field, Fuller, and Peckham, this was done through the commerce clause and the due process clause. In the time of McReynolds, Butler, Sutherland, and Van Devanter it was through the United States privileges and immunities clause, as well as by the commerce and due process clauses. The justices dominating the fourth, sixth, and eighth periods had an entirely different constitutional philosophy and believed that business should have less protection and other interests more protection, and they undertook to give this protection by subjecting the personal liberty protected by the contract clause, the commerce clause, and the due process clause to social control in the exercise of the police power, taxation, and eminent domain.

Much of the work of the Supreme Court in the various periods was permanent. Thus, the work of Chief Justice Marshall in establishing a dual form of government and the supremacy of the Supreme Court was apparently a permanent establishment, and there has never been much danger of later justices overruling Chief Justice Marshall on these points. But on the question whether business should have more or less protection, the work of the justices in one period has not been permanent. Chief Justice Marshall made the contract clause protect corporations, apparently even as against the power of taxation, eminent domain, and the police power. But later justices subjected this protection to eminent domain and the police power. Such justices as Field, Fuller, and Peckham could protect the economic interests against an income tax and hours of labor legislation but only for a short time. Justices McReynolds, Butler, Sutherland, and Van Devanter could protect business against a minimum wage law; but it was not very long before other justices reversed them on this point.

United States economic history can be divided into four periods: the pre-industrial period prior to 1840, the corporate in-
dustrial period from 1840 to 1880, the corporate monopoly period, from 1880 to 1918, and the corporate finance period from 1918 on. At first, as developed in England around and in the time of Cromwell, capitalism was characterized by private enterprise, individual initiative, profit motive, wealth, and competition. In the pre-industrial period, which in the United States was agricultural, all of these original characteristics of capitalism continued to exist, with special emphasis upon property and contract. Largely as a result of the emergence of the private corporation, our economic system has gradually changed until it now possesses practically none of the original characteristics of capitalism. The period of corporate industry marked the beginning of this change in the development of a labor class. The period of corporate monopoly spawned the modern trust and developed an intercleavage between business classes and other classes. The period of corporate finance was characterized by the dominance of the promoter and banking control of industry. Today ownership and power are no longer united. Ownership now is so dispersed that it has almost become public ownership, but control is fast passing to management. Private enterprise also has largely disappeared; it has been supplanted by corporate enterprise. Individual initiative has very largely likewise disappeared, and in its place has arisen a large class of dependent wageworkers who are mere links in a chain of causation. The profit motive is an incentive now only for a few insiders called management, and as a result wealth is more and more being concentrated in the hands of multimillionaires and billionaires. Competition has either degenerated into cut-throat competition or been eliminated by merger and holding company devices.

With this transition most of the original economic laws of Adam Smith and Herbert Spencer have ceased to operate. Technological improvements and new schemes of mass production have arisen, but along with these advantages have occurred a steady increase in indebtedness, unemployment, and a concentration of wealth which has led to recurrent depres-
sions as well as a great amount of corporate scullduggery at the expense of both stockholders and the general public.

This economic situation has posed a very difficult problem for the justices of the United States Supreme Court. They have taken to themselves, under the power of judicial review, sufficient power to guide political development so as to determine its relation to economic development. In constitutional periods dominated by Justices Marshall, Field, Fuller, Peckham, McReynolds, Butler, Sutherland, and Van Devanter, the Supreme Court on the whole followed the economic theories of Adam Smith and Herbert Spencer and the legal theories of Sir Henry Maine and John Austin, which resulted in exempting business both from economic and legal control. In the time of Justice Miller and Chief Justice Waite the judicial common-law method of lawmaking and law reform, as championed by James C. Carter, triumphed over the legislative code method of David Dudley Field and gave the courts with liberal tendencies all the opportunity they needed. But before much was accomplished, the justices of the next period developed an individualistic law which could not cope with collectivistic economics. Beginning with the nineties attempts were made to subject corporations to legal control through the device of administrative commissions; but the work of these commissions, though encouraged by the justices of the viewpoint of Justice Holmes, was very largely destroyed through the principles of judicial review of questions of fact and trials de novo introduced by the justices who were opposed to his viewpoint. The justices of the Supreme Court in the present period seem to be making what they think is a positive effort to make our thought patterns correspond to the realism of our economic life.

We have perhaps said enough to show that the Supreme Court has been a Constitution-maker and how the justices of the Supreme Court have struggled with each other over what direction constitutional development should take. During all of our United States history certain of our justices have been the dominant figures in this struggle. For this reason perhaps
a few words about some of these justices and their work would be appropriate.

Who can be said to be the makers, or fathers, of the United States Constitution? In selecting the fathers of our Constitution it will be necessary to name some who lived before our Constitutional Convention. Thus, in a very real sense, all of the following may be said to have been fathers of our United States Constitution: Edward Coke, John Pym, John Hampden, John Milton, John Locke, William Blackstone, Jeremy Bentham, the tories who contributed our system of checks and balances, the barons who made the feudal doctrine of Magna Charta, and men who hammered out the petition for the Bill of Rights and the various common-law doctrines which were caught up into the cosmic phrases of our original Constitution. In addition to these Englishmen there will have to be named such people as Harriet Beecher Stowe, Adam Smith, Henry Maine, Meade and Grant, Thomas Jefferson, Daniel Webster, and William J. Bryan, all of whom indirectly helped to write into our Constitution some of its more important provisions. Of course, the members of the Constitutional Convention will have to be named as fathers of the Constitution. However, only a few (mostly young men) in this small group of men composing the Constitutional Convention did most of the work of the Convention and will have to be given chief credit for making the original Constitution. Of these mention must be made of James Madison, Gouverneur Morris, Alexander Hamilton, James Wilson, George Washington, Benjamin Franklin, and George Mason. James Madison was the reputed author of the plan used for the basis of the Constitution. He was a scholar in politics, had a mind stored with the lore of the ancient world, was a master of the political science of Aristotle, was familiar with the nature of the governments of Greece, Switzerland, and Holland, was a profound student of English constitutional law and history, was a leader in the Constitutional Convention, and more than any other man should be called the father of the original Constitution. Gouverneur Morris will have to be given
as much credit for the form of our original Constitution as Madison will have to be given credit for its substance. He was the member of the committee on style who did the work of drafting the original Constitution, with its stately phrases, lucid expression, and condensation of statement. Alexander Hamilton, as a lawyer and statesman, had a name surrounded with a halo of renown and a mind so colossal that it has been thought equaled by only five or six others in all human history. His work in the Constitutional Convention was not inconsiderable, and his work in procuring the ratification of the original Constitution and in establishing the administrative framework of the government was so great that he must be named next after Madison and Morris as a father of the original Constitution. James Wilson also must be named as one of the great fathers of the original Constitution because of his breadth of knowledge of constitutional theory in the Constitutional Convention and the profundity of his arguments in the Pennsylvania Ratifying Convention. After him must be named George Washington because of the patient, masterly way he presided over the Constitutional Convention and because of his work as first President; Benjamin Franklin because of the sway he held over the turbulent members of the Constitutional Convention in keeping them together; and George Mason because of his authorship of the Virginia Constitution and the Virginia Bill of Rights. In addition to these men Thomas Jefferson should be named as one of the fathers of the Constitution, although not a member of the Constitutional Convention, because of his authorship of the Virginia act on religious liberty and his work as President of the United States. So far as the Bill of Rights is concerned, James Madison should be given chief credit because he introduced the bill therefor into Congress.

Yet, in spite of the greatness of all of the men to whom reference has been made, the greatest makers of our United States Constitution have been certain justices of the United States Supreme Court.
At the head of all these names must be mentioned Chief Justice John Marshall. Chief Justice Marshall must be given credit for writing into our Constitution the doctrine of a dual form of government and the doctrine of the supremacy of the Supreme Court. It has sometimes been contended that the Constitutional Convention put these doctrines into our Constitution. There are materials for a dual form of government found in the original Constitution in connection with the doctrine of separation of powers and the limitations on the nation and states, yet if it had not been for the work of Chief Justice Marshall it might plausibly be argued either that the Constitution contemplated the gradual absorption of the states by the nation or that the states were sovereign over the nation. It was Marshall's decisions which settled this point. It might perhaps be inferred that the Supreme Court had some supremacy over state courts on federal questions and perhaps even over Congress in the case of express prohibitions, though not as a final process. But the supremacy of the Supreme Court over state legislatures and Congress and state executives and federal executives was the work of Chief Justice Marshall. In addition, he did a great deal of work in the establishment of the doctrine of the sovereignty of the people as a whole and the creation of the doctrine of protection of personal liberty against unreasonable social control. For these reasons he, perhaps more than any other man who has ever lived, is entitled to be called the father of the United States Constitution. Justice Holmes rightly once said "that if American law were to be represented by a single figure, skeptic and worshiper alike would agree without dispute that the figure could be one alone, and that one John Marshall." His decision in Marbury v. Madison was perhaps both bad law and bad logic. His decision in Fletcher v. Peck ratified one of the most corrupt land steals in history. His Dartmouth College case has been modified in most of its essentials. His decision in Gibbons v. Ogden was more or less confused. His decision in McCulloch v. Maryland included an awkward obiter dictum on taxation.
Yet while these decisions in which he established the new doctrines of constitutional law may be criticized, Marshall's philosophy of constitutional law has emerged above criticism; and he must be given credit first for establishing respect for the Constitution and the Supreme Court, second for establishing the authority of the federal government, third for restraining the states to their special spheres of action, and fourth for giving the ambiguous phrases of the Constitution a broad common-sense interpretation. While his specific decisions may have been repudiated, his interpretation and his philosophy which inspired those decisions are more fully accepted now than at any other time in our history. His intellect was characterized by profundity and irresistible logic. His character commanded the highest respect. He was the greatest constitutional judge the United States has ever produced. He was the greatest Constitution-maker we have ever had. He molded and shaped the framework of our government into complete form and made the Supreme Court the greatest achievement in our constitutional history.

Chief Justice Taney was a great Constitution-maker not because of his abortive Dred Scott Decision, but chiefly because of his modification of the work of Chief Justice Marshall in protecting personal liberty and in continuing the work of Chief Justice Marshall in establishing judicial supremacy. Chief Justice Waite and Justice Miller will have to be named as other fathers of our Constitution because they wrote into our Constitution more power for government to delimit personal liberty and because of the way in which they construed the slavery amendments so that they gave a minimum of protection to personal liberty. Justice Field was one of the great judicial fathers of our Constitution because of his work in extending the due process clause to matters of substance and to the protection of corporations. Chief Justice Fuller will have to be named as a father of the Constitution for his temporary work of making the Constitution protect personal liberty against income taxation and against state liquor laws. Justice
Peckham will have to be named as a father for his work in making the Constitution protect personal liberty against hours of labor legislation.

Justice Holmes will have to rank with Chief Justice Marshall and James Madison as a Constitution-maker of the United States. He had a mastery of legal philosophy and history and an uncanny knowledge of social needs. As a result, more than any other justice perhaps, he struck a happy balance between personal liberty and social control. He did not confound the familiar with the necessary. Though a philosopher turned lawyer, he still had a mind concerned with the destiny of man rather than with the effervescent events of the day and was able to subdue to reason the host of public controversies which came before him. He accomplished his work not so much in great cases as in great utterances. He exercised tolerance and humility in passing judgment on the experience and beliefs of others. His traditions were founded on knowledge, not fear. His conclusions transcended his own preferences and were based not on prejudice but on reason. He dwelt serenely above the din of the moment. He looked at our federal system like a statesman and did not let sterile logic or judicial power acting on unexamined assumptions destroy either state or federal power. While other justices reflected the economic order in which they grew up, he reflected the economic order which had grown up around him. He attributed a different significance to those liberties of the individual which history had attested as indispensable conditions of a free society from what he attributed to liberties derived mostly from shifting economic arrangements. He stood foursquare for freedom of thought—"not free thought for those who agree with us but freedom for the thought we hate." While his views were in the ascendant on the Court, constitutional law made wonderful growth. With brave clarity he analyzed the governing elements in modern economic struggle and gave judicial recognition to his analysis. "Justice Holmes is built into the structure
of our national life and has written himself into the slender volume of the literature of all time."

Other justices who should be named as Constitution-makers are: Justice Brandeis, who had in the practice of the law most of his early training for his work on the bench but who, unlike most practitioners, thought less of his livelihood and winning cases and more of the goal of law and of the best means for the attainment of that goal; Justice Stone, who, first trained as a law school man and then as attorney-general of the United States, thus obtained a broad social viewpoint, and with a mind naturally open and tolerant, and with a good command of English, exerted great influence in determining constitutional growth; and Justice Cardozo, who was perhaps the greatest state judge the United States has ever had, a writer of fascination, a philosopher of renown, an unexcelled jurist, who, with his clarity of vision, his balance of common sense, and his moral integrity, contributed during his long life to make the law what it ought to be, to the discomfiture of all who might disagree with his results, and for a short time helped to determine constitutional development.

As a result of the work of these men and their associates, we have today the Constitution as set forth hereinafter.

The first thing that should be noted therein is the constitutional doctrines it contains. They have already been named and enumerated. One of these is the doctrine of sovereignty of the people as a whole. As a result of the work of the Supreme Court, this means that the people as a whole have the sovereign power to make social control, or law. Perhaps the doctrine as created by the Supreme Court can be expressed in no better words than those of Abraham Lincoln when he characterized our government as "a government of the people, by the people, and for the people."

Another one of these doctrines is the doctrine of amendability, which means that our Constitution is subject to change by orderly processes. The Constitution itself was created by a revolution, because the Articles of Confederation could be
amended only by unanimous consent. But our Constitution provides for change by amendment instead of revolution, provided the methods for proposing and ratifying amendments are followed.

Another one of these doctrines is that of a dual form of government. The Supreme Court has made this mean that, under the United States Constitution, there has been a division of powers between the national government and the governments of the various states—two co-existing governments exercising authority within the same physical territory. According to this doctrine, the national government has only the sovereign specific police power, general taxation power, and specific power of eminent domain expressly given to it or implied from such express powers. The states have the sovereign general powers of police, taxation, and eminent domain given them expressly or impliedly, except in so far as they have been superseded by the powers given to the federal government and except as they may be reserved by the people to themselves. But in case of conflict the federal prevails over the states’ power.

Another one of these doctrines is that of separation of powers. Under judicial interpretation this means that there are three departments, or branches, of the federal government—legislative, executive, and judicial—to which various powers have been assigned, though under the scheme of checks and balances not necessarily their own appropriate powers; that all the powers of one branch of government cannot be given to another; that all of the different powers of government cannot be commingled except in executive tribunals or commissions; and that one branch of government cannot delegate its powers to another, except as the other may already exercise them.

The doctrine of the supremacy of the Supreme Court, as developed by the Supreme Court, means that, in the separation of powers among the three branches of the federal government and between the nation and the states, state governments and the different branches of the federal government are not independent and coördinate but are subject to the United States
Supreme Court, which has the exclusive power of final decision of all questions of jurisdiction and all constitutional questions other than political. In other words, the doctrine of the supremacy of the Supreme Court makes the Supreme Court peculiarly the guardian of the Constitution, supreme over the other branches of the federal government and the various branches of the state governments, and the arbiter between the nation and the states and the government and the people.

The doctrine of universal citizenship and suffrage means, according to the Supreme Court, that all persons born or naturalized in the United States are citizens of the United States and of the state wherein they reside and are entitled to vote, whether they are white or black and whether they are men or women, although Congress may prescribe qualifications for naturalization and the state legislatures and Congress may prescribe qualifications for voting.

The doctrine of protection of personal liberty against unreasonable social control, which is the peculiar product of the Supreme Court, means both that many historical forms of personal liberty and any other form of personal liberty can be delimited by social control either by the states or by the nation only if such social control is a proper exercise of the police power, or of the power of taxation, or of the power of eminent domain, and that, under the doctrine of the supremacy of the Supreme Court, the question whether or not there is a proper exercise of the police power, or of taxation, or of eminent domain is in the last analysis to be answered by the Supreme Court.

Another thing which should be noted in the Constitution is that the Supreme Court has made an American way of attaining the goal of law—a good society, or what has been called the American dream. Others have said that the American dream is a dream of opportunity and incentive for the average man; that it has been a dream of the common good—not the exploitation of any individuals or classes, but a richer, fuller life for all; an opportunity to find a way of life, to earn
a living, and to raise a family in comfort and security; and that it has been designed to liberate the best in individual genius, whether in thought or achievement, to offer an equal opportunity to everyone, reward ability, encourage service, and to pass its achievements on as a sacred trust from one generation to another. The Supreme Court has accepted this dream as the goal of law and Constitution-making in the United States and in the United States Constitution has implemented it and found a way to make the dream real. This way is not the way of every patrioteer or crackpot. It is not even the way of individualism in preference to collectivism, nor of personal liberty instead of social control, nor of local government instead of central government, nor of a complete division of governmental powers against the commingling of such powers, nor of pure capitalism as distinguished from communism or socialism, because throughout United States history we have always had all these ways of life and we probably should continue to have them.

The American way of creating a good society, as established by the Supreme Court, is in the first place the way of the sovereignty of the people as a whole, that is, the rule of the people by themselves. This is perhaps the chief characteristic of the American way of life created by the Supreme Court. Another and second characteristic of this American way is the exercise of this sovereignty, partly by the people directly through the power of amendment, but for the most part through their agents or organs of government. A third characteristic of this American way is the fact that these agents of government do not have unlimited powers but are given only such powers as are necessary to strike a sane balance between personal liberty and social control and to compromise the differences between the conflicting social and economic forces and classes in the United States. Under this characteristic the agents of government have sufficient power to delimit personal liberty by social control where the protection of social interests demands it. But they do not have sufficient power to set up
enough social control to create tyranny. Another characteristic of the American way is accomplishment of results by law instead of by force. In addition to these characteristics the American way is also beginning to include the leadership of experts instead of spoilsmen and scientific planning instead of haphazard and chance action.

Another thing that should be noted about the Constitution is that the Supreme Court has made it a progressive document. There have been and are people in the United States who have thought of the Constitution as an anchor holding society to one place, or as something static and unchanging like a painting. Thus one prominent lawyer, at least so far as his official position was concerned, has been trying to spread the dogma that our Constitution is only that document written in the Constitutional Convention, in spite of the fact that such a document would not only not include the original Bill of Rights with all its fundamental guarantees, but it would not include any of those provisions written into the Constitution by the Supreme Court, such as: that a jury trial means a jury of twelve men and a unanimous verdict; that neither a president nor a governor has the power to veto a constitutional amendment; that the Supreme Court is supreme over the other branches of government; that there is a rule against the delegation of powers; that the federal government can acquire foreign territory by treaty; that the federal government's power over interstate commerce is exclusive where there are matters national in scope; that human rights and corporate property rights are protected by due process of law as a matter of substance against unreasonable social control. Another prominent lawyer and senator has gone up and down our country inveighing in wild and whirling words against the change in the method of election of the President, against the changes that have occurred in our dual form of government, against the changes made in our separation of powers, against the change in the method of choosing senators, against the change permitting the levying of income taxes not proportionate to political power,
and against the regulation of liquor traffic by the federal government—evidently all on the theory that our Constitution is not a progressive but a static document. Yet this very gentleman did not refer to other changes in our Constitution like that extending its protection to the property of corporations. Very likely this was a change to which he had no objection. Yet, as a matter of fact, the changes against which he inveighed did occur; and there was a good reason for every one of the changes. The method of selecting the President was changed because of the necessities of the party system. The changes in our dual form of government were made by our Supreme Court and by formal amendment in order to adapt our government to economic and social changes. The changes in our separation of powers were made by our Supreme Court in order to make the government a better government. The changes in the method of choosing senators was made because the people as a whole, who are sovereign, believed in an extension of pure democracy. The change in the method of levying income taxes was made only to correct a bad decision of the Supreme Court. The change in our government made by the Eighteenth Amendment, as well as that made by the Twenty-first Amendment, only corresponded with what the people thought was a social need.

The truth of the matter is that the Constitution made by the Supreme Court can better be likened to a rudder guiding our social and economic order through the centuries, or to a tree growing in breadth and height and sending out new branches all the time. Our Constitution should be thought of as a growing, living thing. It has changed as it has been necessary to adapt our Constitution to new, larger, different, and more trying situations and demands. The Supreme Court has refused to allow a judicial strait jacket to be placed around the Constitution. This is why the people of the United States have not had to adopt an entirely new written Constitution, as Madison thought it would be necessary for them to do, and why we have not had another revolution like that of 1776.
Where national welfare has demanded it, the Supreme Court has even overruled prior decisions. Where new emergencies have arisen, the Supreme Court has always arisen to the emergencies. What it deemed good morals in 1800 it did not consider good morals after 1900. What was first regarded as the scope of admiralty law and jurisdiction was later expanded to meet the situation created by the Great Lakes and our western rivers. When Jefferson made the Louisiana Purchase, the Supreme Court found a way to make it constitutional. When there was a need to make paper money legal tender during the Civil War, the Supreme Court found the way to give Congress this power. After the Supreme Court finally came to the conclusion that it had been permitting too much multiple taxation of intangibles, it found a way to limit such taxation to the state of the domicile of the owner. When the Supreme Court discovered that the doctrine of the Dartmouth College case was giving too much protection to corporations, it modified the doctrine so as to subject contracts to the police power and to the power of eminent domain.

In this publication we have traced the growth of the United States Constitution through the first 150 years of its history and have in the draft Constitution submitted hereinafter set forth the Constitution as it had been developed up to this 150-year date. The development that has gone on through the last 150 years will undoubtedly continue to go on, and perhaps someone else after another 150 years will trace the growth of the Constitution and the work of the Supreme Court through this second 150 years. No one should get the impression that the document set forth hereinafter as the entire Constitution of the United States will continue to be the entire Constitution of the United States in the future any more than the original Constitution continued to be our entire Constitution through the last 150 years.

Finally, it should be noted that the Constitution created by the Supreme Court during the last 150 years is not what William E. Gladstone once called the original Constitution,
"the most wonderful work ever struck off at one time by the brain and purpose of man," but the most wonderful thing made by the brain and purpose of man during these 150 years. The dual form of government and separation of powers created during this time established a framework of government unique in the history of political science. The supremacy of the Supreme Court established by the Supreme Court itself has made that tribunal the outstanding achievement in our form of government. The embodiment of the Bill of Rights in our Constitution, as interpreted by the Supreme Court, has made available to the people of the United States the achievements which it took centuries of time and oceans of blood to attain in English history. The sovereignty of the people as a whole, universal citizenship and suffrage, and the power of amendment have enthroned the common man, given him a fuller and larger opportunity for a better life, and made political democracy permanent and sure.

Not only should this work of the Supreme Court be referred to, but the Supreme Court as an institution should have reference made to it. Not only the people and prosperity but the very existence of the Union has been placed in its hands. Without it the Constitution would be a dead letter. It has protected alike its own powers, executive powers, and legislative powers. It has defended the Union against the exuberant aspirations of the states and the states against the exaggerated claims of the Union. It has protected public interests against the interests of individuals and the interests of individuals against the public interests. It has conserved the spirit of order against the innovations of excited democracy, but has allowed liberty as well as order. It has maintained the power of the people against the ambitions of all their agents. More than any other branch of government it has stood for the country as a whole. It, more than any other factor, has kept our whole mighty fabric of government from rushing to destruction. It furnishes the highest example of adequate results of any branch of our government. It has
averted storms which have threatened our peace and lent its powerful aid in uniting the whole country in the bonds of justice. If it were struck from our system, it seems as though there would be little of value that would remain. "It would be as rational to talk of a solar system without a sun" as to talk of the United States without its Supreme Court.
The Constitution of the United States at the End of One Hundred Fifty Years*

Including the original Constitution, the formal amendments, and that part of the Constitution made by the Supreme Court and custom, as found in the Supreme Court Reports, arranged so far as possible according to the analysis found in the original Constitution.

PREAMBLE

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America, [and to that end determine sovereignty, citizenship, supremacy of the Supreme Court, and amendability; set up a division of powers between the state governments and the federal government and between the branches of the federal government; designate the powers delegated to the federal government; and prescribe the limitations on the powers both of the federal government and of the state governments].

ARTICLE Ia: SOVEREIGNTY

The sovereign power to establish social control (law), either by Constitution or legislation, belongs to the people of the

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*The part of the Constitution made by the Supreme Court and custom (including executive and legislative practice) is printed in italics. Only a few provisions such as the institution of a cabinet, and commissions and a conference committee of the two houses, the repeal of the Twelfth Amendment by the party system, the nature of a republican form of government, presidential succession and the decision of political questions have been inserted in the Constitution by custom. The rule against a third term for the President is in process of making by custom.

Parts of the original Constitution superseded by later amendments are omitted.

Material in brackets is merely explanatory. Every statement added to the original Constitution and the formal amendments is supported by the latest decisions of the Supreme Court (or other courts). These are sufficiently given in the notes. For a fuller discussion of these authorities the reader is referred to the author's text on Constitutional Law and a brief article in 23 Ia. L. Rev. 165.

United States as a whole. All departments and organs of government are agencies of the sovereign people and have only such powers of police, taxation, and eminent domain as are delegated to them expressly or impliedly by the people. The Constitution is of the people, for the people, and administered by the people through agents of its creation, and can be amended at any time by the people either legally or extra-legally, either as to any characteristics of the framework of government created by the Constitution, or the powers of various organs of government or otherwise.

ARTICLE Ib: DUAL FORM OF GOVERNMENT

For the exercise of the sovereign powers of the people there is established for domestic affairs a dual form of government under which certain powers—general tax powers, specific police powers, and the power of eminent domain for the benefit of other powers—are delegated expressly or impliedly to the federal government; and 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 (Amendment X) until the Constitution is amended. For foreign affairs the federal government is given all the powers not

2. Chisholm v. Georgia, 2 Dall. 419 (U. S. 1793); Penhallow v. Doane, 3 Dall. 54 (U. S. 1795); M'Culloch v. Maryland, 4 Wheat. 316 (U. S. 1819); White v. Hart, 13 Wall. 646 (U. S. 1871); Gunn v. Barry, 15 Wall. 610 (U. S. 1872); Yick Wo v. Hopkins, 118 U. S. 356 (1886); Leser v. Garnett, 258 U. S. 130 (1922).
7. Abraham Lincoln, Gettysburg Address; Cooper Union speech.
reserved to the people. For domestic affairs, it is given the express powers hereinafter enumerated, and all the implied powers necessary and proper to carry into execution its express powers.

Presumptively the federal government has power over all matters national in scope, and the state governments have power over all matters of state-wide scope. In case of conflict between the powers of the federal government and the powers of the state governments the federal government shall be preferred.

Both the federal government and the state governments are immune from discriminatory exercise of powers by the other, and neither can delegate its own powers to the other.

ARTICLE Ic: CITIZENSHIP AND SUFFRAGE

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, or born abroad of United States parents, are citizens of the United States and of the State wherein they reside. (Amendment XIV, Sec. 1.) Whites, Negroes, and Asians but not Indians, nationals, or corporations may be citizens of the United States by birth.

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20. M'Culloch v. Maryland, 4 Wheat. 316 (U. S. 1819); Collector v. Day, 11 Wall. 113 (U. S. 1870). There is a little prophesy in the statement for which these cases are cited as authorities. The Supreme Court has not as yet allowed general nondiscriminatory taxation by the states and the nation against each other, but the recent decisions of the Court are rapidly moving to this position. James v. Dravo Contracting Co., 302 U. S. 134 (1937); Helvering v. Therrell, 303 U. S. 218 (1938); Helvering v. Mountain Producers Corp., 303 U. S. 376 (1938); Helvering v. Gerhardt, 304 U. S. 405 (1938); Allen v. Regents, etc. of U. of Georgia, 304 U. S. 439 (1938).
22. Ex parte Wong Foo, 230 Fed. 534 (1916); Quan Hing Sun v. White, 254 Fed. 402 (1918).
The United States may deprive one of his citizenship\textsuperscript{24} and a citizen of the United States has the privilege of expatriation.\textsuperscript{25} Naturalization is a power to confer, not to take away citizenship;\textsuperscript{26} but Congress has the power to choose those it will make eligible for and to prescribe the qualifications for naturalization.\textsuperscript{27} It also has the power either to exclude or to expel aliens who have not become naturalized.\textsuperscript{28}

[Section 2. As a result of custom and the limitations of the fifteenth and nineteenth amendments—hereinafter set forth—suffrage also has become by constitutional doctrine practically universal.]

ARTICLE Id: SEPARATION OF POWERS

The federal government is divided into three branches, legislative, executive, and judicial, each of which shall exercise all of its own appropriate powers, except as otherwise stated herein,\textsuperscript{29} but no one branch may exercise all of the powers of another branch;\textsuperscript{30} and the powers of all three branches may not be commingled in any one branch or agency,\textsuperscript{31} nor may any branch delegate its own powers,\textsuperscript{32} except to the extent permitted herein.

ARTICLE Id: SUPREMACY OF THE SUPREME COURT

The decision of questions of jurisdiction and of all constitutional questions other than political is vested in the Supreme Court,\textsuperscript{33} which in this respect is made supreme over the other branches of the federal government\textsuperscript{34} and over all branches of

\begin{itemize}
\item \textsuperscript{24} MacKenzie v. Hare, 239 U. S. 299 (1915).
\item \textsuperscript{25} MacKenzie v. Hare, 239 U. S. 299 (1915).
\item \textsuperscript{26} Osborn v. Bank of the United States, 9 Wheat. 738 (U. S. 1824).
\item \textsuperscript{27} Tutun v. United States, 270 U. S. 568 (1926); United States v. MacIntosh, 283 U. S. 605 (1931).
\item \textsuperscript{28} U. S. v. Ju Toy, 198 U. S. 253 (1905); Yamataya v. Fisher, 189 U. S. 86 (1903); Osaka v. United States, 300 U. S. 98 (1937).
\item \textsuperscript{29} Mississippi v. Johnson, 4 Wall. 475 (U. S. 1867).
\item \textsuperscript{30} Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935).
\item \textsuperscript{31} McGrain v. Daugherty, 273 U. S. 135 (1927).
\item \textsuperscript{32} Hampton v. United States, 276 U. S. 394 (1928).
\item \textsuperscript{33} Prentis v. Atlantic Coast Line Co., 211 U. S. 210 (1908); Luther v. Borden, 7 How. 1 (U. S. 1849).
\item \textsuperscript{34} Marbury v. Madison, 1 Cranch 137 (U. S. 1803).
\end{itemize}
the state governments,\textsuperscript{35} but which can exercise its supremacy only in a case or controversy\textsuperscript{36} (which includes a declaratory judgment);\textsuperscript{37} but the Supreme Court does not have the power to enjoin or mandamus the President or Congress.\textsuperscript{38}

\textbf{ARTICLE I: LEGISLATIVE DEPARTMENT AND ITS POWERS}

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

Section 2. (1) The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors [voters] in each State shall have the qualifications requisite for electors [voters] of the most numerous branch of the State legislature.

(2) No person shall be a representative who shall not at the time he enters upon his duties\textsuperscript{39} have attained 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 [domicile] of that State in which he shall be chosen.

(3) 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

\textsuperscript{35} Fletcher v. Peck, 6 Cranch 87 (U. S. 1810); Cohens v. Virginia, 6 Wheat. 264 (U. S. 1821); Sterling v. Constantin, 287 U. S. 378 (1932).


\textsuperscript{38} Mississippi v. Johnson, 4 Wall. 475 (U. S. 1867).

\textsuperscript{39} Congressional construction. Hammond v. Herrick, Clarke and Hall's Contested Elections in Congress, 287.
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. (Amendment XIV, Sec. 2.) The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

(5) The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. (1) The Senate of the United States shall be composed of two senators from each State, elected by the people thereof, for six years; and each senator shall have one vote. The electors [voters] in each State shall have the qualifications requisite for electors [voters] of the most numerous branch of the State legislature. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. (Amendment XVII, Sec. 1.)

(2) Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as
may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year.

(3) No person shall be a senator who shall not at the time he enters upon his duties 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 [domicile] of that State for which he shall be chosen.

(4) The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

(5) The Senate shall choose their officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

(6) The Senate shall have the sole power to try all impeachments; but the members of the Senate and House are not subject to impeachment. 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 (a quorum).

(7) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but it does not constitute “jeopardy of life or limb” and the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

41. Senatorial construction. Wharton State Trials, 260-321; Story on the Constitution, Secs. 293-95; Foster on the Constitution, Sec. 91.
Congress may provide for trial of cases of misbehavior in office and removal from office by a court established for such purpose.\textsuperscript{44}

Section 4. (1) Congress outside of primary elections\textsuperscript{45} has complete power over the election of senators and representatives except 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, and may prevent corruption and violence in such elections.\textsuperscript{46}

(2) The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day. (Amendment XX, Sec. 2.)

Section 5. (1) Each House shall be the judge of the elections, returns, and (moral as well as technical)\textsuperscript{47} qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

(3) Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

(4) Neither House, during the session of Congress, shall,

\textsuperscript{44} United States v. Perkins, 116 U. S. 483 (1886); 31 Ill. L. Rev. 631.
\textsuperscript{45} Newberry v. United States, 256 U. S. 232 (1921).
\textsuperscript{46} Barry v. United States, 279 U. S. 597 (1929).
\textsuperscript{47} Barry v. United States, 279 U. S. 597 (1929); senatorial construction in the Smith and other cases.
without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. (1) The senators and representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same but not immune from the service of process in a civil suit;⁴⁸ and for any speech or debate in either House, they shall not be questioned in any other place.

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

(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. (Amendment XIV, Sec. 3.)

(4) The terms of senators and representatives shall end at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin. (Amendment XX, Sec. 1.)

Section 7. (1) All bills for raising revenue, but not appropriation bills, shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills, even to substituting an entirely new measure.

(2) Every bill which shall have passed the House of Representatives and the Senate, shall, before it become[s] 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, within ten calendar days, Sundays excepted, after presentation to him, 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 signed it, unless the Congress, by their final adjournment or adjournment of a session prevents its return, in which case it shall not be a law.

(3) Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment and a question of amendment of the Constitution), 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,

52. The Pocket Veto Case, 279 U. S. 655 (1929); Wright v. United States, 302 U. S. 583 (1938).
shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. (1a) The Congress shall have the power of eminent domain for the benefit of its other specific powers\textsuperscript{54} and its spending power,\textsuperscript{55} to take private property for a public use (or benefit)\textsuperscript{56} upon the payment of just compensation;

(1) The Congress shall have the general\textsuperscript{57} power to lay and collect taxes, duties, imposts, and excises, to [in order to] pay the debts, and provide for the common defense and general welfare of the United States;

(2a) The Congress, subject to the limitations elsewhere set forth in this Constitution, shall have the specific police powers\textsuperscript{58} hereinafter named: and may use them though it thereby exercises some of the police powers of the states;\textsuperscript{59}

(2) To borrow money not merely for the common defense and general welfare\textsuperscript{60} but on the credit of the United States;

(3) To regulate (control, prohibit, protect, and encourage)\textsuperscript{61} commerce with foreign nations, and among the several States, and with the Indian tribes; and thereby to exercise both a police power and the power of taxation\textsuperscript{62} over the persons and instrumentalities engaged in interstate commerce,\textsuperscript{63} over the goods carried in interstate commerce,\textsuperscript{64} and over those obstruct-


\textsuperscript{56} Strickley v. Highland Boy Mining Co., 200 U. S. 527 (1906).

\textsuperscript{57} United States v. Butler, 297 U. S. 1 (1936).

\textsuperscript{58} Brooks v. United States, 267 U. S. 432, 436 (1925).

\textsuperscript{59} Houston and Texas Ry. v. United States, 234 U. S. 342 (1914).

\textsuperscript{60} United States v. Sacks, 257 U. S. 37 (1921); United States v. Janowitz, 257 U. S. 42 (1921).

\textsuperscript{61} Gibbons v. Ogden, 9 Wheat. 1 (U. S. 1824); Dayton-Goose Creek Ry. v. United States, 263 U. S. 456 (1924).

\textsuperscript{62} Head Money Cases, 112 U. S. 580 (1884).

\textsuperscript{63} Minnesota Rate Cases, 230 U. S. 352 (1913); Swift and Co. v. United States, 196 U. S. 375 (1905); Second Employers' Liability Cases, 223 U. S. 1 (1912).

\textsuperscript{64} Lottery Cases, 188 U. S. 321 (1903); Clark Distilling Co. v. Western Maryland Ry., 242 U. S. 311 (1917).
ing or burdening interstate commerce.\footnote{Northern Securities Co. v. United States, 193 U. S. 197 (1904); Board of Trade v. Olsen, 262 U. S. 1 (1923); National Labor Relations Board v. Jones & Laughlin, 301 U. S. 1 (1937).} Its power over interstate commerce is, but its power over foreign commerce is not, limited by due process of law;\footnote{Monongahela Navigation Co. v. United States, 148 U. S. 312 (1893); United States v. Curtiss-Wright Corp., 299 U. S. 304 (1936); The Abby Dodge, 223 U. S. 166 (1912).}

(3a) Commerce includes traffic and transportation of goods and persons.\footnote{Gibbons v. Ogden, 9 Wheat. 1 (U. S. 1824); Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196 (1885); Carter v. Carter Coal Co., 298 U. S. 328 (1936).} Interstate commerce begins when traffic or transportation begins between people of different states or places in different states (or for transportation through a different state)\footnote{Gibbons v. Ogden, 9 Wheat. 1 (U. S. 1824); Real Silk Hosiery Mills v. City of Portland, 268 U. S. 325 (1925); Lemke v. Farmers' Grain Co., 258 U. S. 50 (1922).} and ceases when the original package has been delivered and sold once or broken,\footnote{Bowman v. Chicago etc. R. R., 125 U. S. 507 (1888).} or when goods to be assembled are assembled,\footnote{York Mfg. Co. v. Colley, 247 U. S. 21 (1918).} or when the pressure or voltage of gas or electricity transmitted has been stepped down;\footnote{East Ohio Gas Co. v. Tax Commission of Ohio, 283 U. S. 465 (1931).}

(3b) Congress' power over interstate commerce is exclusive when such commerce is national in scope and needs one uniform method of regulation;\footnote{Cooley v. Board of Port Wardens, 12 How. 298 (U. S. 1851).} and concurrent with the states otherwise;\footnote{Gilman v. Philadelphia, 3 Wall. 718 (U. S. 1865).} but even when Congress' power is exclusive the states may exercise their general police power for the protection of the social interests of the people of the state though they thereby indirectly regulate interstate commerce,\footnote{Plumley v. Massachusetts, 155 U. S. 461 (1894); Whitfield v. Ohio, 297 U. S. 431 (1936).} and they may tax goods carried in interstate commerce when at rest before transportation has begun,\footnote{Coe v. Errol, 116 U. S. 517 (1886).} during transportation,\footnote{Minnesota v. Blasius, 290 U. S. 1 (1933).} and after transportation has ended;\footnote{Brown v. Houston, 114 U. S. 622 (1885).} peddlers for the privilege of ped-
dling goods shipped in interstate commerce;\(^7\) property of those engaged in interstate commerce when situated within the state\(^8\) and a proportional part of property without fixed situs but moving through this and other states;\(^9\) and they may levy net\(^1\) (but not gross)\(^2\) income taxes on domestic corporations on income derived from interstate commerce; but a state may not tax goods moving in interstate commerce\(^3\) nor the privilege of doing interstate commerce;\(^4\) and an act of Congress will supersede a state regulation both in case of concurrent power and in case of a state's general police power indirectly regulating interstate commerce.\(^5\)

(4) To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States. The state legislatures and Congress have a concurrent power over the subject of bankruptcy.\(^6\) Bankruptcy laws are designed for the relief of debtors as well as creditors,\(^7\) but not without state consent for political subdivisions.\(^8\) But a federal bankruptcy law will supersede a state insolvency law.\(^9\) Congress has plenary power over naturalization,\(^0\) except that it thereby may confer but not take away citizenship.\(^1\)

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78. Howe Machine Co. v. Gage, 100 U. S. 676 (1879); Emert v. Missouri, 156 U. S. 296 (1895).
81. United States Glue Co. v. Oak Creek, 247 U. S. 321 (1918).
83. Case of State Freight Tax, 15 Wall. 232 (U. S. 1872).
87. Matter of Klein, 1 How. 277 (U. S. 1843).
prescribe such conditions and qualifications for naturalization as it chooses;\(^9^2\)

(5) To coin money, regulate the value thereof \(\textit{in relation either to each other or to purchasing power}\),\(^9^3\) and of foreign coin, and fix the standard of weights and measures; to issue bills of credit,\(^9^4\) to make its own notes legal tender,\(^9^5\) to override gold clauses in private contracts,\(^9^6\) to ban gold hoarding;\(^9^7\) and to charter national banks;\(^9^8\) [exclusive powers]

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

(7) To establish post-offices and post-roads; \textit{to carry the mails};\(^9^9\) to exclude matter from the United States mails when it is due process of law to do so,\(^1^0^0\) and to prevent obstructions to the United States mails;\(^1^0^1\)

(8) To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries [exclusive powers]; but royalties from patents\(^1^0^2\) and copyrights\(^1^0^3\) are subject to taxation by the states;

(9) To constitute tribunals inferior to the Supreme Court [exclusive powers]; which shall be known as constitutional courts inside and legislative courts outside of the constitutional system,\(^1^0^4\)

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93. Veazie Bank v. Fenno, 8 Wall. 533 (U. S. 1869).
94. Hepburn v. Griswold, 8 Wall. 603 (U. S. 1869).
95. Legal Tender Cases, 12 Wall. 457 (U. S. 1870); Juilliard v. Greenman, 110 U. S. 421 (1884).
102. Fox Film Corp. v. Doyal, 286 U. S. 123 (1932).
(10) To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations [exclusive powers];

(11) To declare war, repeal such declaration,\textsuperscript{105} grant letters of marque and reprisal, and make rules concerning captures on land and water [exclusive powers];

(12) To raise and support armies either by calling for volunteers or by conscription\textsuperscript{106} [exclusive powers]; but no appropriation of money to that use shall be for a longer term than two years;

(13) To provide and maintain a navy [exclusive power];

(14) To make rules for the government and regulation of the land and naval forces [exclusive powers]. \textit{In time of war military law is the sole law governing soldiers and sailors};\textsuperscript{107} and military tribunals shall have jurisdiction over civilians within the actual theater of military operations;\textsuperscript{108}

(15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, \textit{or for service over seas}\textsuperscript{109} [exclusive powers];

(16) To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

(17) To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority \textit{if granted} over all places purchased by the consent of the legislature of the State in

\textsuperscript{105} Accepted construction. 18 Mich. L. Rev. 669; 19 Ky. L. J. 327.
\textsuperscript{106} Selective Draft Law Cases, 245 U. S. 366 (1918).
\textsuperscript{107} Dow v. Johnson, 100 U. S. 158 (1879).
\textsuperscript{108} \textit{Ex parte Milligan}, 4 Wall. 2, 139 (U. S. 1866).
\textsuperscript{109} Cox v. Woods, 247 U. S. 3 (1918).
which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;

(17a) To provide for administrative commissions and executive tribunals\textsuperscript{110} and for a conference committee of the two Houses;\textsuperscript{111}

(17b) To decide political questions (but it shall be a judicial power to decide whether or not any particular question is a judicial or a political question), in which case it shall be as free from constitutional restrictions as is the British Parliament at the present time;\textsuperscript{112}

(17c) To punish for contempt in order to keep order among its own members, compel their attendance, protect them from others except in the case of slander and libel, determine election cases and impeachment charges, and exact information from other departments in aid of the legislative function;\textsuperscript{113} and

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof. To this end it may prescribe criminal penalties,\textsuperscript{114} may give effect to treaties,\textsuperscript{115} provide for removal in diversity cases,\textsuperscript{116} supplement the admiralty power of the courts,\textsuperscript{117} and implement the equality clause.\textsuperscript{118}

(19) Congress may delegate legislative power to the territories;\textsuperscript{119} the power to determine conditions or contingencies,

\textsuperscript{110} Hampton v. United States, 276 U. S. 394 (1928).
\textsuperscript{111} Congressional custom.
\textsuperscript{112} Luther v. Borden, 7 How. 1 (U. S. 1849); Pacific Tel. etc. Co. v. Oregon, 223 U. S. 118 (1912).
\textsuperscript{113} Anderson v. Dunn, 6 Wheat. 204 (U. S. 1821); In re Chapman, 166 U. S. 661 (1897); McGrain v. Daugherty, 273 U. S. 135 (1927).
\textsuperscript{114} United States v. Marigold, 9 How. 560 (U. S. 1850); Hoke v. United States, 227 U. S. 308 (1913).
\textsuperscript{115} Missouri v. Holland, 252 U. S. 416 (1920).
\textsuperscript{116} Tennessee v. Union and Planters' Bank, 152 U. S. 454 (1894); Gibson v. Bruce, 108 U. S. 561 (1883).
\textsuperscript{117} The Lottawanna, 21 Wall. 558 (U. S. 1874); Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920).
\textsuperscript{118} Ex parte Virginia, 100 U. S. 329 (1880).
\textsuperscript{119} Dorr v. United States, 195 U. S. 138 (1904).
or to make regulations, or to ascertain facts to other branches or agencies of government;\textsuperscript{120} and the power to administer standards to administrative tribunals or executive agencies or officers.\textsuperscript{121}

(20) Rate making (unless confiscatory) is a legislative function which can be exercised only by Congress\textsuperscript{122} [or by an administrative commission of Congress].

**ARTICLE II: EXECUTIVE DEPARTMENT AND ITS POWERS**

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

(2) Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress. But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

(3) The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all

\textsuperscript{120} Hampton v. United States, 276 U. S. 394 (1928); United States v. Grimaud, 220 U. S. 506 (1911).

\textsuperscript{121} Interstate Commerce Commission v. Brimson, 154 U. S. 447 (1894).

\textsuperscript{122} Colorado Tel. Co. v. Wilmore, 53 Colo. 585, 129 Pac. 204 (1913).
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.

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. (Amendment XII, (1) and (2).)

[The party system and the system of elections in the United States have by custom made the system of the electoral college a mere form and technicality so that the electors merely register the vote of the party winning an election in the various states.]

The terms of the President and Vice-President shall end at noon on the twentieth day of January of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin. (Amendment XX, in Sec. 1.)

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

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

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. (Amendment XII, Sec. 3.)

(6) If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified. (Amendment XX, Sec. 3.)

(7) The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them. (Amendment XX, Sec. 4.)

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

(9) The President shall, at stated times, receive for his service, 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.

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

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. (1) The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment, but not excepting punishment for contempt of court.123

(2) He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments, and Congress may prescribe reasonable qualifications for office.124

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

(4) The President may remove executive and administra-

124. Implicit in Civil Service Commission.
tive officers, not members of boards and commissions, without the advice and consent of the Senate, though appointed by him therewith.

(5) There shall be as many executive departments as Congress shall prescribe provided the department is to exercise a power delegated to the federal government. The President shall nominate and by and with the advice and consent of the Senate shall appoint the heads of all departments, who shall hold office at the will of the President and who, with the Vice-President, shall constitute the cabinet of the President.

(6) Administrative functions are peculiarly executive and must be exercised by the executive branch of the government only.

(7) The exercise of all the sovereign powers may be commingled in boards and commissions subject to judicial review of questions of law decided by them.

(8) The President in the absence of action by Congress may decide political questions.

(9) The President may recognize the existence of a state of war, may declare a state of insurrection to exist, and subject to judicial review may declare martial law.

(10) The President may establish a government for conquered or otherwise newly acquired territory until such time as Congress may act.

(11) The treaty power extends to all matters pertaining to foreign relations and is not limited by the doctrines of dual

127. Custom.
128. Custom.
129. Custom.
132. Prize Cases, 2 Black 635 (U. S. 1862).
133. Ex parte Milligan, 4 Wall. 2 (U. S. 1866); Moyer v. Peabody, 212 U. S. 78 (1909).
form of government\textsuperscript{136} and separation of powers.\textsuperscript{137} A treaty repeals a prior act of Congress and is itself repealed by a later act of Congress (if Congress has coördinate jurisdiction).\textsuperscript{138}

Section 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive and may dismiss\textsuperscript{139} ambassadors and other public ministers; he may recognize or refuse to recognize new governments;\textsuperscript{140} he shall take care that the laws be faithfully executed and that all the great interests intrusted by the Constitution to the national government are protected,\textsuperscript{141} and shall commission all the officers of the United States.

Section 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

**ARTICLE III: JUDICIAL DEPARTMENT AND ITS POWERS**

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. (1) The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws

\begin{itemize}
\item \textsuperscript{136} United States v. Curtiss-Wright Corp., 299 U. S. 304 (1936).
\item \textsuperscript{137} Santovincenzo v. Egan, 284 U. S. 30 (1931).
\item \textsuperscript{138} Missouri v. Holland, 252 U. S. 416 (1920).
\item \textsuperscript{139} Custom.
\item \textsuperscript{140} Custom.
\item \textsuperscript{141} \textit{In re} Neagle, 135 U. S. 1, 64 (1890).
\end{itemize}
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 extending to all public navigable waters of the United States forming a highway to other states or to foreign countries; to justiciable civil controversies to which the United States shall be a party; to justiciable civil controversies between two or more States; between a State and citizens of another State; between citizens of different states, including corporations as citizens of the state of incorporation; 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.

The judicial power extends to declaratory judgments, but not to political questions.

(2) 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 (Amendment XI); nor may a state be sued by citizens of its own without its consent; nor by a foreign state, and a state cannot sue the United States; but one state may sue another state or its citizens and the United States may sue a state, and the immunity of a state from suit does not protect state officers violating rights protected by the United States Constitution.

142. The Propeller Genesee Chief v. Fitzhugh, 12 How. 443 (U. S. 1851); The Daniel Ball, 10 Wall. 557 (U. S. 1870).
144. United States v. Hudson & Goodwin, 7 Cranch 32 (U. S. 1812).
150. Kansas v. United States, 204 U. S. 331 (1907).
153. Rolston v. Missouri Fund Commissioners, 120 U. S. 390 (1887); Ex parte Young, 209 U. S. 123 (1908).
(3) 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. Congress may not regulate the original jurisdiction or procedure of the Supreme Court, but it may prescribe the subjects for its appellate jurisdictions, and it may prescribe the original and appellate jurisdiction for lower federal courts.

(4) The trial of all crimes, except in cases of impeachment, shall be by jury, unless the accused waives this privilege, 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.

(5) Questions of jurisdiction and constitutionality, the trial of cases, and punishment for contempt of court are so inherently judicial that they cannot be delegated by the judicial to another branch and another branch cannot deprive or limit the judicial branch of its power over them.

(6) The judicial power shall include the power to formulate judicial legislation in cases involving federal questions, but not in cases of diversity of citizenship, as established by the common law and by the doctrine of the supremacy of the Supreme Court.

(7) Rules of legal procedure and rules for the admission of attorneys to practice in the federal courts are both legislative and judicial in character and may be prescribed by either the

judicial or the legislative branch of government, the legislative so far as necessary under the police power to protect paramount social interests, the judicial so far as necessary to facilitate the administration of justice.\textsuperscript{161}

Section 3. (1) Treason against the United States shall consist only in levying war against them (by a direct effort to overthrow the government\textsuperscript{162}) or in adhering to their enemies, giving them aid and comfort (by acts indicating disloyalty to the United States and sympathy with the enemy and directly furthering their hostile designs\textsuperscript{163}). No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(2) The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

ARTICLE IIIa: LIMITATIONS ON POWERS OF FEDERAL GOVERNMENT

(1) Habeas Corpus. 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, and then only by Congress.\textsuperscript{164}

(2) Ex Post Facto. No bill of attainder (or bill of pains and penalties)\textsuperscript{165} or ex post facto (criminal)\textsuperscript{166} law shall be passed.

(3) Direct Taxes. No capitation, or other direct tax (including property taxes\textsuperscript{167} and income taxes on stock divi-

\textsuperscript{161} In re Constitutionality of Section 251.18 Wisconsin Statute, 204 Wis. 501, 236 N. W. 717 (1931); Baltimore etc. R. R. v. Grant, 98 U. S. 398 (1878).

\textsuperscript{162} Ex parte Bollman, 4 Cranch 75 (U. S. 1807).

\textsuperscript{163} Ex parte Hanauer v. Doane, 12 Wall. 342 (U. S. 1870); Sprott v. United States, 20 Wall. 459 (U. S. 1874).

\textsuperscript{164} Ex parte Merryman, Fed. Cas. No. 9487 (1861); Ex parte Milligan, 4 Wall. 2 (U. S. 1866).

\textsuperscript{165} Ex parte Garland, 4 Wall. 333 (U. S. 1867).

\textsuperscript{166} Calder v. Bull, 3 Dall. 386 (U. S. 1798).

dends of the same kind of stock) shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken; but

(4) Income Taxes. The Congress shall have power to lay and collect taxes on incomes severed from capital, from whatever source derived, unless on stock dividends of the same kind of stock, without apportionment among the several States, and without regard to any census or enumeration. (Amendment XVI.)

(5) Exports. No tax or duty shall be laid on articles exported from any state to a foreign county.

(6) Preference of Ports. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

(7) Appropriations. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(8) Nobility. 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.

(9) Freedom of Religion, Speech, and Assemblage. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [religious beliefs]; or abridging the freedom of speech, or of the press; or the right

172. Woodruff v. Parham, 8 Wall. 123 (U. S. 1868).
of the people peaceably to assemble, and to petition the government for a redress of grievances. (Amendment I.)

The guaranty of religious liberty protects only the exercise of religious beliefs and against the establishment of a state religion and the requirement of a religious test for office;173 it does not protect against unsocial conduct.174 The guaranty of freedom of speech and the press protects against censorship, except for the equity powers of the courts and enterprises which do not give expressions of opinion,175 and against liability for publications where such liability is not a proper exercise of the police power.176

(10) Freedom to Bear Arms. A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms in militias177 shall not be infringed. (Amendment II.)

(11) Immunity against Quartering Soldiers. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. (Amendment III.)

(12) Immunity against Unreasonable Searches and Seizures. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but for the prevention of crimes178 upon probable cause, supported by oath or affirmation of facts,179 and particularly describing the place to be searched, and the persons or things to be seized. (Amendment IV.)

Searches and seizures are reasonable without a warrant if of a person validly arrested,180 or of a place where a person has

178. Lippman v. People, 175 Ill. 101, 51 N. E. 872 (1898).
been validly arrested,181 and with a warrant in other cases if above procedure is followed.182 But they are unreasonable if they amount to general warrants, writs of assistance, or other enterprises and expeditions not recognized by the common law.183 There are no searches or seizures at all where information is obtained by the opening of letters in a penitentiary,184 or by the use of searchlights,185 or by the tapping of telephone wires.186 A subpoena ducas tecum may amount to a search and seizure.187 Corporations shall be protected against unreasonable searches and seizures.188 Papers and things seized in an unreasonable search cannot be used in evidence against the person from whom seized.189

(13) Right to Indictment by Grand Jury, Immunity against Double Jeopardy, Self-Incrimination, and Undue Process of Law. No person shall be held to answer for a capital, or otherwise infamous crime (punishable by imprisonment in a penitentiary or at hard labor any place),190 unless on a presentment or indictment of a grand jury (constituted as at common law as to number, secrecy, and impartiality),191 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 indictable192 offense within the same jurisdiction193 to be twice put in jeopardy of life or limb (which occurs after a valid indictment or information, arraignment, and impanelment and swearing of a jury194 unless the

188. Silverthorne Lumber Co., Inc. v. United States, 251 U. S. 385 (1920).
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jury is discharged for cause\textsuperscript{195} or an appeal is taken),\textsuperscript{196} nor shall be compelled, by any branch of the government in any proceeding in which his testimony can be used in that jurisdiction\textsuperscript{197} in that or a later\textsuperscript{196} criminal case, to be a witness against himself, or to produce his books and papers;\textsuperscript{199} nor be deprived of life, liberty, or property, without due process of law [as explained in connection with the due process clause placed in the Constitution by the Fourteenth Amendment]; nor shall private property be taken for public use, without just compensation. (Amendment V.)

(14) The Right to Jury Trial in Criminal Prosecutions, Nature of Accusation, Confrontation, Compulsory Process and Counsel. In all criminal prosecutions for major offenses,\textsuperscript{200} the accused shall enjoy the right to a speedy, but not immediate\textsuperscript{201} and public trial, so far as courtroom space and good conduct of spectators will permit,\textsuperscript{202} by an impartial jury, of twelve men,\textsuperscript{203} supervised by the court\textsuperscript{204} and whose verdict must be unanimous,\textsuperscript{205} 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 sufficiently to enable him to make his defense and to enable the court to decide questions of double jeopardy;\textsuperscript{206} to be confronted with the witnesses against him so that he may see them,\textsuperscript{207} hear what they say,\textsuperscript{208} and subject them to cross-

\textsuperscript{195} Logan v. United States, 144 U. S. 263 (1892); Thompson v. United States, 155 U. S. 271 (1894).
\textsuperscript{197} Counselman v. Hitchcock, 142 U. S. 547 (1892).
\textsuperscript{198} Counselman v. Hitchcock, 142 U. S. 547 (1892).
\textsuperscript{199} Boyd v. United States, 116 U. S. 616 (1886).
\textsuperscript{200} Callan v. Wilson, 127 U. S. 540 (1888); Lawton v. Steele, 152 U. S. 133 (1894).
\textsuperscript{201} United States v. Fox, 3 Mont. 512 (1880).
\textsuperscript{202} Reagan v. United States, 202 Fed. 488 (1913); Dutton v. State, 123 Md. 373, 91 Atl. 417 (1914); Moore v. Dempsey, 261 U. S. 86 (1923).
\textsuperscript{203} Patton v. United States, 281 U. S. 276 (1930).
\textsuperscript{205} Springville v. Thomas, 166 U. S. 797 (1897); Patton v. United States, 281 U. S. 276 (1930).
\textsuperscript{206} United States v. Cruikshank, 92 U. S. 542 (1876).
\textsuperscript{207} State v. Mannion, 19 Utah 505, 51 Pac. 542 (1899).
\textsuperscript{208} Ralph v. State, 124 Ga. 81, 52 S. E. 298 (1905); Felts v. Murphy, 201 U. S. 123 (1906).
examination;\textsuperscript{209} to have compulsory process for obtaining witnesses in his favor; and to have the assistance of and privilege of consultation with counsel for his defense. (Amendment VI.) The right of confrontation does not include presence at a view of premises,\textsuperscript{210} nor the right to exclude dying declarations\textsuperscript{211} or the testimony of witnesses on a former trial if now dead.\textsuperscript{212} Counsel appointed cannot decline an appointment.\textsuperscript{213}

(15) Jury Trial in Civil Suits. In suits at common law, but not in admiralty,\textsuperscript{214} probate,\textsuperscript{215} military,\textsuperscript{216} equity,\textsuperscript{217} disbarment,\textsuperscript{218} administrative,\textsuperscript{219} tax,\textsuperscript{220} or extraordinary legal proceedings,\textsuperscript{221} where the value in controversy shall exceed twenty dollars, the right of trial by jury [as described above] shall be preserved, and no fact, tried by a jury, shall otherwise be re-examined, in any court of the United States, than according to the rules of the common law. (Amendment VII.)

(16) Immunity against Excessive Bail, etc. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. (Amendment VIII.) It is not a cruel and unusual punishment to execute a convicted person by electricity,\textsuperscript{222} or by shooting,\textsuperscript{223} or to impose a heavier punishment upon a habitual criminal than upon other criminals.\textsuperscript{224}

(17) Rights Retained by the People. The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people. (Amendment IX.)

\begin{itemize}
\item 209. Wray v. State, 154 Ala. 36, 45 So. 697 (1908).
\item 211. Mattox v. United States, 156 U. S. 237 (1895).
\item 212. Dowdell v. United States, 221 U. S. 325 (1911).
\item 215. \textit{In re} Moore, 72 Calif. 335, 13 Pac. 880 (1887).
\item 217. \textit{In re} Debs, 168 U. S. 564, 594 (1895).
\item 218. \textit{Ex parte} Wall, 107 U. S. 265 (1882).
\item 219. Fong Yue Ting v. United States, 149 U. S. 698 (1893).
\item 222. \textit{In re} Kemmler, 136 U. S. 436 (1890).
\item 223. Wilkerson v. Utah, 99 U. S. 130 (1878).
\item 224. McDonald v. Massachusetts, 180 U. S. 311 (1901).
\end{itemize}
ARTICLE IIb: LIMITATIONS ON POWERS OF STATES

(1) General Limitations. 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 (criminal)\textsuperscript{223} law, or law impairing the obligation of contracts executed\textsuperscript{226} or executory\textsuperscript{227} made by the states\textsuperscript{228} or by private individuals;\textsuperscript{229} or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports to a foreign country\textsuperscript{230} 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. But a state cannot make a compact with a foreign power which amounts to a treaty, alliance, or confederation even with the consent of Congress.\textsuperscript{231}

The obligation of contracts is not impaired by constitutional

\textsuperscript{225} Calder v. Bull, 3 Dall. 386 (U. S. 1798); State v. Snell, 49 Wash. 177, 94 Pac. 926 (1908).
\textsuperscript{226} Fletcher v. Peck, 6 Cranch 87 (U. S. 1810).
\textsuperscript{227} Green v. Biddle, 8 Wheat. 1 (U. S. 1823).
\textsuperscript{228} New Orleans Water Works Co. v. Louisiana Sugar Ref. Co., 125 U. S. 18 (1888).
\textsuperscript{229} Sturges v. Crowninshield, 4 Wheat. 122 (U. S. 1819); Ogden v. Saunders, 12 Wheat. 213 (U. S. 1827).
\textsuperscript{230} Woodruff v. Parham, 8 Wall. 123 (U. S. 1868).
exercises of the police power\textsuperscript{232} or of the power of taxation\textsuperscript{233} or of the power of eminent domain.\textsuperscript{234}

Charters of private corporations are contracts within this section.\textsuperscript{235}

(2) United States Privileges and Immunities. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States which they have because of their peculiar relation to the United States.\textsuperscript{236} (Amendment XIV, sentence 2.)

(3) Due Process of Law. Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor by any of its branches\textsuperscript{237} deny to any person natural\textsuperscript{238} or artificial\textsuperscript{239} within its jurisdiction the equal protection of the laws, \textit{(i.e., the protection of equal laws).}\textsuperscript{240} (Amendment XIV, Sec. 3.) The protection of equal laws permits classification but prohibits class legislation.\textsuperscript{241} A corporation not engaged in interstate commerce is not protected by the protection of equal laws until admitted into a state\textsuperscript{242} unless a state undertakes to impose a condition which would affect an interest of the United States or of another state.\textsuperscript{243} The protection of due process of

\begin{itemize}
  \item \textsuperscript{232} Stone v. Mississippi, 101 U. S. 814 (1879); Illinois Central R. R. v. Illinois, 146 U. S. 387 (1892).
  \item \textsuperscript{233} Milliken v. United States, 283 U. S. 15 (1931); Hale v. Iowa, 302 U. S. 95 (1937); J. D. Adams v. Storem, 304 U. S. 307 (1938).
  \item \textsuperscript{234} West River Bridge Co. v. Dix, 6 How. 507 (U. S. 1848); Long Island Water Supply Co. v. Brooklyn, 166 U. S. 685 (1897).
  \item \textsuperscript{235} Trustees of Dartmouth College v. Woodward, 4 Wheat. 518 (U. S. 1819).
  \item \textsuperscript{236} Crandall v. Nevada, 6 Wall. 35 (U. S. 1867); Slaughter-House Cases, 16 Wall. 36 (U. S. 1872). This provision has not been changed by Colgate v. Harvey, 296 U. S. 404 (1935). See Breedlove v. Suttles, 302 U. S. 277 (1937).
  \item \textsuperscript{237} Home Tel. & Tel. Co. v. City of Los Angeles, 227 U. S. 278 (1913); Truax v. Raich, 299 U. S. 33 (1915); \textit{Ex parte Virginia}, 100 U. S. 339 (1880).
  \item \textsuperscript{238} Yick Wo v. Hopkins, 118 U. S. 356 (1886).
  \item \textsuperscript{239} Santa Clara County v. Southern Pacific Ry., 118 U. S. 394 (1886); Gulf etc. Ry. v. Ellis, 165 U. S. 150 (1897).
  \item \textsuperscript{240} Barbier v. Connolly, 113 U. S. 27 (1885).
  \item \textsuperscript{241} Hayes v. Missouri, 120 U. S. 68 (1887); Pembina Mining Co. v. Pennsylvania, 125 U. S. 181, 188 (1888).
  \item \textsuperscript{242} Security Mutual Life Ins. Co. v. Prewitt, 202 U. S. 246 (1906).
\end{itemize}
law extends, first, to matters of legal procedure, second, to matters of jurisdiction, and, third, to matters of substance.

(Procedure.) Due process as a matter of procedure, except in the case of legislative bodies, in the case of executive officers exempted by the common law, and in matters of trifling importance, guarantees (1) notice sufficient to inform a person of the time and place of the trial or hearing and the tribunal before which a claim is to be made, to apprize him of the nature of the cause against him, and to afford him sufficient opportunity to prepare and make his answer; (2) a reasonable opportunity to be heard in cases involving the police power, the power of eminent domain, and taxation where taxes are levied according to value or by local assessment; (3) an impartial tribunal, and where questions of law are involved, a judicial tribunal; and (4) an orderly course of procedure giving a review by a court over the exercise of judicial power by an administrative tribunal, judges and jurors of mental competence, freedom from mob domination, presence of wit-

245. Restatement, Conflict of Laws, Sec. 43.
252. Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393, 395 (1908); Gleason v. U. of Minnesota, 104 Minn. 359, 116 N. W. 650 (1908).
nesses, a public trial, counsel and an opportunity for counsel to prepare his case.

(Jurisdiction.) Due process as a matter of jurisdiction requires, for judicial jurisdiction over persons, personal or constructive service of process within the territorial boundaries of the government exercising it or outside such territorial boundaries if one is domiciled within and, for judicial jurisdiction over things, substituted service by publication of notice; for jurisdiction for property and inheritance taxation, situs in the case of land and tangibles except under the unit rule and domicile in the case of intangibles except under the unit rule and except for inheritance taxes on foreign intangibles evidenced by tangibles in this country and except where intangibles have acquired a business situs for excise taxation, the grant of a privilege for income taxation situs, or domicile, or nationality for jurisdiction for divorce, either domicile of both parties or domicile of one and jurisdiction of the other or authorization of one by the

278. Davis v. Davis, 59 S. Ct. 3 (1938).
other to acquire a separate home, or the last matrimonial domicile of both parties.

(Substance.) Due process as a matter of substance prohibits the delimitation of personal liberty at all unless by the police power, taxation, or eminent domain; and requires for the police power a paramount social interest, for taxation a public purpose, for eminent domain a public use or benefit, and a method which in each case bears a substantial relation to the end to be accomplished. Physical safety, bodily health, freedom of the will, mental health, privacy, honor and reputation, belief and opinion, parental and marital relations, property, promised advantages, advantageous relations, freedom from fraud and malicious prosecution, freedom of contract, of the highways and of locomotion.

tion, livelihood, domestic, religious, and political institutions, general morals, natural and human resources, general political, cultural and economic progress and the individual life are sufficient social interests for the police power. Performance of governmental functions and granting of subsidies where the number benefited is great or where private enterprise is inadequate are sufficient public purposes for taxation. The federal government may spend revenue from taxation not only for federal powers but for the general welfare of the people of the United States. A use by the public and a benefit to the public are sufficient public uses for eminent domain. What other things are sufficient social interests, public purposes, and public uses or benefits shall be determined in each case by the Supreme Court.

The guaranty of due process of law guarantees the protection of equal laws, freedom of speech and of the press, religious freedom, counsel, confrontation with witnesses,

300. Hebrew v. Pulis, 73 N. J. L. 621, 64 Atl. 121 (1906).
306. Ohio Oil Co. v. Indiana, 177 U. S. 190 (1900).
nature of accusation, right of assemblage, and public trial, and protects against cruel and unusual punishment, double jeopardy, self incrimination, taking property for a public use without just compensation, and the impairment of the obligation of a contract.

In general the scope and meaning of due process of law in the Fourteenth Amendment is the same as that of due process of law of the Fifth Amendment, and whatever limitation the guaranty of due process of law imposes upon state action, the same is imposed upon federal action.

ARTICLE IIIc: LIMITATIONS ON POWERS OF FEDERAL GOVERNMENT, STATES, AND INDIVIDUALS

(1) Transportation of Liquor. The transportation or importation into any State, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited (Amendment XXI, Sec. 2); and neither the commerce clause nor the due process clause limits the power of the states to pass such laws.

(2) Slavery. Neither slavery nor involuntary servitude (either by peonage, or the Chinese coolie trade, or by making a breach of contract a crime punishable by compulsory labor, or by specific performance of personal service contracts),

335. Slaughter-House Cases, 16 Wall. 36 (U. S. 1872); United States v. Reynolds, 225 U. S. 133 (1914).
337. Case of Mary Clark, 1 Blackf. 122 (Ind. 1821); Toledo etc. Ry. v. Pennsylvania Co., 54 Fed. 730 (1893).
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 whether by the action of the federal government, or of the states, or of individuals.\(338\)

Congress shall have power to enforce this article by appropriate legislation. (Amendment XIII.)

(3) Suffrage. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude; (Amendment XV, Sec. 1); but reasonable qualifications for voting may be required\(339\) and private political parties not authorized by the government may discriminate against the races\(340\). The Congress shall have power to enforce this article [section] by appropriate legislation. (Amendment XV, Sec. 2.)

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 sex (Amendment XIX, Sec. 1); but reasonable qualifications for voting may be prescribed.\(341\) Congress shall have power to enforce this article [section] by appropriate legislation. (Amendment XIX, Sec. 2.)

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

\(338\). United States v. Choctaw Nation, 38 Ct. Cl. 558 (1903); Hodges v. United States, 203 U. S. 1 (1906).

\(339\). Williams v. Mississippi, 170 U. S. 213 (1898); Pope v. Williams, 193 U. S. 621 (1904).


ARTICLE IV: INTERSTATE RELATIONS

Section 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, including statutes and domestic civil judgments of both state and federal courts when founded on jurisdiction, but not contracts, matters of procedure, or foreign judgments, and the federal courts shall give full faith and credit to state judgments, and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. (1) The citizens of each State shall be entitled to all civil rights, powers, privileges and immunities of citizens in the several States, that is, to whatever rights, powers, privileges, and immunities a state gives its own citizens, not including corporations.

(2) A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. But mandamus will not lie to compel a governor to extradite a fugitive, and a state has no power to extradite a person to a foreign country. The legality of extradition proceedings may be tested by the writ of habeas corpus. A person extradited for one crime may be tried for any other offenses with which the demanding state may charge him.

350. Slaughter-House Cases, 16 Wall. 36 (U. S. 1872); Blake v. McClung, 172 U. S. 239 (1898); Paul v. Virginia, 8 Wall. 168 (U. S. 1868).
353. Ex parte Royall, 117 U. S. 241 (1886).
(3) No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Section 3. (1) New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress. After admission of a state Congress has no further jurisdiction over it.355

(1a) The federal government has the power to acquire356 and to incorporate357 new territory either by treaty or by act of Congress, and Congress has the power to govern such territory,358 but the original laws of annexed territory continue to apply until changed by congressional or executive action.359

(2) The Congress also shall have power to dispose of, and make all needful rules and regulations respecting the Northwest360 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.

(3) All constitution prohibitions apply in the state;361 all constitutional prohibitions, except those limited to the state, in annexed territory incorporated;362 all constitutional prohibitions, except those limited to the states or the United States, and the artificial prohibitions in annexed territory unincorporated;363

and only the absolute prohibitions in territory temporarily occupied or territory within the limits of a foreign country.364

Section 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

What is a republican form of government is a political question for the legislative and executive branches of the federal government,365 but the guaranty of a republican form of government is not violated by a state initiative and referendum law.366

ARTICLE V: AMENDMENT

(1) The Congress, whenever two-thirds of a quorum367 of both Houses shall deem it necessary, shall without the approval of the President368 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 without approval of governors369 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 State, without its consent, shall be deprived of its equal suffrage in the Senate.

(2) An amendment submitted to state legislatures cannot be ratified by conventions in the several states370 nor by a referendum.371 A proposal of an amendment will last for rati-

A state may ratify after rejecting but may not reject after ratifying an amendment. The power of amendment includes the power of repeal.

(3) There are no implied limitations upon the power of amendment, but an amendment is good though not germane, or though in the form of legislation, or though a grant of new power either to the federal government or to the states, or though it tends to destroy the dual form of government, or though it changes the protection of personal liberty.

ARTICLE VI: FEDERAL SUPREMACY

(1) All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

(2) This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. In case of conflict between the powers of the states and the powers of the United States the former must yield to the latter.

(3) The senators and representatives before-mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support

374. Ex parte Kerby, 103 Ore. 612, 205 Pac. 279 (1922).
376. M'Culloch v. Maryland, 4 Wheat. 316 (U. S. 1819); Riggs v. Johnson Co., 6 Wall. 166 (U. S. 1867); Vezzie Bank v. Fenno, 8 Wall. 533 (U. S. 1869); Kansas v. United States, 204 U. S. 331 (1907); Houston & Texas Ry. v. United States, 234 U. S. 342 (1914).
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.

Addendum

The following is a list of constitution making decisions rendered by the Supreme Court between March 4, 1939, and the time of its adjournment in June:

State of Texas v. State of Florida, 59 S. Ct. 563 (1939). (The Supreme Court has jurisdiction to determine domicile in an original suit of interpleader where net estate is not sufficient to pay amount of taxes assessed on basis of domicile by four states.) See Art. III, Sec. 2 (1).

Graves v. People of State of New York, 59 S. Ct. 595 (1939). (A state has the power to levy a nondiscriminatory income tax upon the salary of a federal employee though all activities of the federal government are governmental and all stand on a parity in the absence of immunity given by Congress. [Pittman v. H. O. L. C., 60 S. Ct. (1939).]) See Art. II.

Pacific Employees Ins. Co. v. Industrial &c. Com. of California, 59 S. Ct. 629 (1939). (The full faith and credit clause does not require one state to substitute for its own compensation law the compensation law of another state in the case of persons and events within it though such other statute would be applied by the other state in a suit therein involving the same persons and events.) See Art. IV, Sec. 1.

Mulford v. Smith, 59 S. Ct. 648 (1939). (The second A. A. A. is a valid exercise of police powers over interstate commerce by Congress though it prohibits commerce and though it applies to intrastate transactions where it is not known at the time of warehousing whether goods will be shipped in interstate or intrastate commerce. See Art. II.

National Labor Relations Board v. Fainblatt, 59 S. Ct. 668 (1939). (Power of Congress to regulate commerce extends to the protection of interstate commerce from interference or injury due to wholly intrastate activities.) See Art. II.
Chippewa Indians of Minnesota v. United States, 59 S. Ct. 687 (1939). (Giving citizenship to Indians does not terminate the guardianship of United States over them.) See Art. Ic.


O'Malley v. Woodrough, 59 S. Ct. 838 (1939). (An income tax on the salary of a federal judge is not a diminution of his salary.) See Art. III, Sec. 1.

Guaranty Trust Co. of New York v. Henwood, 59 S. Ct. 847 (1939). (Bond with an option to pay in foreign currency is payable in United States legal tender under money power of United States.) See Art. IIIb (1).


Curry v. McCanless, 59 S. Ct. 900 (1939). (Multiple taxation of intangibles restored.) See Art. IIIb (3) (Jurisdiction).

Hague v. Committee for Industrial Organization, 59 S. Ct. 954 (1939). (Due process as a matter of substance protects freedom of speech and assemblage.) See Art. IIIb (3) (Substance).

Coleman v. Miller, 59 S. Ct. 972 (1939). (Reasonable time for ratification of an amendment is a political question for Congress.) See Art. V (2).