CIVIL GOVERNMENT

IN THE

United States.

BY

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"That which contributes most to preserve the state is to educate children with reference to the state; for the most useful laws, and most approved by every statesman, will be of no service if the citizens are not accustomed to and brought up in the principles of the Constitution."—*Aristotle's Politics*, Book V, Ch. 9.

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To Teachers and Students.

It is a hopeful sign for the future of our country, that the Constitution of the United States is studied so largely in our schools. In a popular government, the people ought to understand the principles on which the government is based, and the machinery of government by which these principles are to be carried out; that is, they ought to understand the Constitution of their nation. Some confused and imperfect knowledge of this will naturally be picked up by most citizens; and a few lawyers and others will gain a comprehensive knowledge of the Constitution. But a clear and accurate knowledge cannot be generally diffused, except by regular instruction in the public schools. It is therefore a hopeful sign that this instruction is now given in a large number of our schools.

This book is a revision of the school book entitled "An Exposition of the Constitution of the United States," which passed through many editions. The present work contains most of the same matter, but with many changes suggested by experience, or compelled by decisions of courts, or legislation. There is also given for the first time a brief constitutional history, including the origin of the Constitution in English history and in the colonial governments, an account of the discussions

in the Constitutional Convention, and the history of its ratification.

The author's aim has been to use plain language and direct and simple forms of statement.

This book is the result of several years' experience in the class-room and in teachers' institutes. That experience has led to certain methods of presenting the subject-matter in the text-book.

The order of the Constitution is followed. The Constitution of the United States has an order of its own, and a good one, and it is an aid to the memory of the student to observe that order.

Some topics are found scattered in different places, like the topic of impeachment. No arrangement of the Constitution can avoid this difficulty. Topics cross one another, and an arrangement which would bring some topics together would scatter others. The best plan for studying is to follow the order of the Constitution.

As an aid to topical recitation, the heading of each paragraph is printed in black letters. The matter printed in smaller type may be omitted if there is lack of time, or with younger classes.

A. O. WRIGHT,

Madison, Wis.

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Thou, too—sail on, O Ship of State!
Sail on, O Union, strong and great!
Humanity, with all its fears,
With all its hopes of future years,
Is hanging breathless on thy fate!
We know what Master laid thy keel,
What Workman wrought thy ribs of steel,
Who made each mast, and sail, and rope,
What anvils rang, what hammers beat,
In what a forge and what a heat
Were shaped the anchors of thy hope!

Fear not each sudden sound and shock,
'T is of the wave, and not the rock;
'T is but the flapping of the sail,
And not a rent made by the gale!
In spite of rock and tempest's roar,
In spite of false lights on the shore,
Sail on, nor fear to breast the sea!
Our hearts, our hopes, are all with thee;
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee—are all with thee!

—*LONGFELLOW.*

Part I.

Introductory.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient cause; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.—Thomas Jefferson. *Declaration of Independence, July 4, 1776.*

Fourscore and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal. . . . We here highly resolve . . . that this nation, under God, shall have a new birth of freedom, and that a government of the people, by the people, and for the people, shall not perish from the earth.— Abraham Lincoln, *Speech at Gettysburg, November 10, 1863.*

CONSTITUTION OF THE UNITED STATES.

CHAPTER I.

THE ENACTING CLAUSE.

This is what I call the American Idea. This idea demands as the proximate organization thereof a democracy, that is, a government of all the people by all the people for all the people; of course, a government of the principles of eternal justice, the unchanging law of God; for shortness' sake, I will call it the idea of freedom.—THEODORE PARKER, in 1850.

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.

I. The United States a republic.—

Governments are classified according to their form as Monarchies, Aristocracies, and Democracies.

1. A *Monarchy* is a government by one person. A monarchy may be either absolute or limited. In an absolute monarchy the sovereign is not restricted in his powers by any constitution; in a limited monarchy he is restricted in his power by some kind of constitution, written or unwritten.

2. An *Aristocracy* is a government by a small part of

the people, who form a privileged class. An aristocracy may be one of birth, or of wealth, or of both combined.

3. A *Democracy* is a government by the people. A democracy may be either pure or representative. A pure democracy is one in which the voters themselves meet and make laws. In a representative democracy the voters elect representatives to make the laws. A representative democracy is usually called a republic. It is plain that in so large a country as ours the voters cannot assemble to make laws, but that they must do that work by representatives; so that in a large country a pure democracy is impossible; if the government is democratic, it must be a representative democracy.

The United States, then, is a republic. It is not the government of one or of the few, but of the many. And as it is representative in form, it is a republic.

A republican form of government is guaranteed to every state in the Union, by this Constitution. (Art. IV, Sec. 4.) Whatever else this means, it means at least that no state shall ever become a monarchy or an aristocracy.

II. The people the source of power.—

A republic is a government by the people through representatives. The representatives govern, but they do not govern by any inherent right, but only *as* representatives. The people are the source of power. In the words of President Lincoln, this is "a government *of* the people, *by* the people, and *for* the people."

The members of the House of Representatives are the most direct representatives of the people, as their name indicates. But every officer and legislator of the United States, or of any state, is directly or indirectly chosen by the people, and is responsible to the people for the faithful performance of his duties.

The Enacting Clause recognizes this fact, that the people are the source of power, and says expressly, "We, *the people* of the United States, do ordain and establish this Constitution."

III. A popular government best.—

A democratic government is best in any country in which the people are fitted for it. Rude and barbarous nations, or nations intelligent but debased morally, are not fitted to govern themselves. Hence monarchies or aristocracies are best for such nations. But where the people generally have a fair degree of intelligence and of moral character, a republican government is best.

The people will doubtless make mistakes and do wrongs, but so will any government, and the mistakes and injustice of a republic are certainly no worse than those of a monarchy or an aristocracy. No one claims that republics will be perfect. Nothing human is perfect.

But we can reasonably claim that those oppressions and corruptions which are easy to begin and to keep up under other forms of government, are almost impossible under a republic. In an absolute monarchy the

interests of the king and his favorites are attended to, without much regard to the interests of the rest of the people. In an aristocracy the interests of the ruling class are the only interests thought of. But in a republic the interests of one class are balanced by the interests of the other classes. All are represented; and the interests of all are secured as well as is possible in human affairs. The public discussions, which are necessary in a popular government, prevent secret forms of corruption, and help to secure justice and purity of administration.

In short, when the people of any country are fit to take care of themselves, they can do it better than any king or nobles can do it for them; and when they are not fitted to govern themselves, no mere form of a written constitution will secure them a real government of the people. Under the form of a democracy it has been possible in some countries for a despot or a powerful class to rule. Such governments have the form of a democracy, but are really monarchies or aristocracies.

IV. Local self-government and national unity.— The United States differs from many republics in being composed of several states. It is a federal republic, in which some powers are given to the state governments and some to the United States government. Just where to draw the line between these two sets of governmental functions, is a difficult question both in theory and in practice. Ever since the Constitution was adopted,

there have always been two political parties, the one inclined to limit the powers of the United States government and increase the powers of the states, and the other party inclined to increase the powers of the United States government and limit those of the states. But, on the whole, the general government has been slowly gaining power at the expense of the state governments. This growth in power, however, has not been so great as to change the essential relations of the two sets of governments. These principles may be stated thus:

1. *The United States government has all the power needed for national independence.*

2. *The State governments have all the power needed for local self-government.*

V. Two jurisdictions.—

Every person in the United States (except in the District of Columbia and unorganized territories, in forts, arsenals, and dockyards, or on the high seas) is thus subject to two jurisdictions. He is subject to two sets of laws, which are made and administered by two different sets of officers, and he pays taxes and owes allegiance to both governments, that of the state or territory in which he is, and that of the United States. For nearly all the ordinary relations of business and society, he looks to his state law and state government. He marries and is divorced, educates his children, transmits his property, buys and sells, and is protected from thieves and murderers, under the laws of the state or territory

where he is at the time. But he is protected from foreign foes by United States troops and ships; he uses United States money; sends and receives letters through the United States post offices; and, if he is a foreigner, he can only be naturalized according to United States law. It is plain that in ordinary business and society the state government touches the citizen at far more points than the general government does.

VI. Municipal self-government.—

But the principle of local self-government is carried out still further. The states leave the affairs of each township, village, city or county to be regulated by the people thereof, under the general provisions of state laws which limit and define the powers of these subdivisions of a state. There is nothing in the United States Constitution which requires this, and not very much in the constitutions of the several states. But it is a part of the unwritten constitution, the political habits of the American people. Thus the federal character of our republic harmonizes with the American habit of local self-government, and is thus sustained by a power far more effectual than any written constitution.

VII. Objects of this Constitution.—

The objects of this Constitution, as stated in the enacting clause, are six:

1. To form a more perfect union.
2. To establish justice.
3. To insure domestic tranquility.

4. To provide for the common defense.

5. To promote the general welfare.

6. To secure the blessings of liberty to the people of the United States and their posterity.

These all refer to the defects in the government of the United States at that time, under the Articles of Confederation.

That union was (1) a very imperfect one; (2) it did not establish justice; (3) it did not insure domestic tranquility; (4) it did not provide efficiently for the common defense; (5) it could do but little to promote the general welfare; (6) and therefore it was not strong enough to secure the blessings of liberty to this country for any great length of time.

The defects of the Confederation were many, but they may all be summed up in one phrase: the real power was vested in the several states, and Congress had no power to enforce its laws. Congress could *resolve*, but it could not *execute*; it could *ask* the states to pay taxes, to furnish troops, to conform to treaties, to do justice to each other's citizens, but it could not *command* them.

VIII. The Constitution compared with the Articles of Confederation.—1. This Constitution forms a more perfect union than that under the Articles of Confederation. It is still not a perfect union; for it was not wished to destroy the states and make one centralized government, nor would that have been wise. But the loose and inefficient Confederation was exchanged for a Federation in which a strong national government was set up over states still retaining much power.

2. Justice is established by means of a national judiciary, which protects foreigners and the citizens of other states against unjust decisions of any state courts. (See Art. III.)

3. Domestic tranquility is insured by the provision that the United States shall protect each state against domestic violence. (Art. IV, Sec. 4.)

4. The common defense could only be provided for by a government capable of raising and supporting armies and navies. Even in the enthusiasm of the Revolutionary War, the central government showed how weak it was to raise armies or collect taxes, and thinking men saw that in another war it might be still worse.

5. To promote the general welfare is an elastic expression, capable of being lengthened or shortened according to our own ideas of what is for the general welfare. This clause has covered things as different as the purchase of Louisiana, an expedition to the north pole, a system of weather reports, and the establishment of the Agricultural Department. Under this clause the powers of the general government may yet be greatly extended.

6. To secure the blessings of liberty, law is needed as well as liberty. Liberty alone soon degenerates into license, and that into anarchy, which is worse than despotism.

The American idea of liberty is of liberty protected by law. This principle is carried out in our own national government. The power of the general government is given to it in order to secure the blessings of liberty to the people; not to destroy that liberty, but to protect it. Under this government we have flourished during this first century as few nations of the world have ever done. We have also survived the shock of a great civil war, which settled the question whether this Constitution should be accepted for all it means. We may therefore reasonably hope that our liberty, protected by the strength of our national government, will be handed down to a remote posterity.

IX. The United States not a confederacy.—

The enacting clause reads, "We, the *people* of the United States, do ordain and establish this *Constitution.*" It does not read, "We, the *states*, do contract and enter into a *treaty* with each other." The United States is therefore *one nation*, and not a confederacy of independent allied states. The source of power is not in the several states, but in the people of the United States.

This enacting clause was not worded as it is hastily or inconsiderately. There was a great difference of opinion in the United States, both before and after this Constitution was adopted, upon this very point. The thirteen colonies, though all alike dependent upon England, were legally independent of one another. They had formed several alliances at different times among themselves for defense, and when the struggle with the mother country began they were drawn together by the necessities of the war. Many thoughtful men advocated a much closer union even in 1775; but the Articles of Confederation adopted in 1781 were as much as the states were then willing to concede. And it was not until experience had shown the great evils which come from the jealousies and rivalries of semi-independent states, held together only by a weak confederate government, that the people became willing to establish a real national government. And even then there was a large minority opposed to the Constitution, *because* it took away the independence of the states.

After the Constitution was adopted the contest was carried on by the two parties which were immediately organized, the Federalist and the Anti-Federalist. As the Constitution by its practical workings showed its value, it came to be accepted generally by the people as the bond of our union. And at

last our great civil war has settled the question practically. The seceding states claimed not only the right of revolution, which every oppressed people has, but the right of secession, claiming that we were not one nation, but a confederacy of independent allied states, and that any state had a legal right to dissolve the alliance at pleasure. The result of the war decided that the American people are *one nation*, and mean to remain so.

CHAPTER II.

THE SOURCES OF THE CONSTITUTION.

Old England knows it true;
The germ she planted grew,
Of liberty.
It grew in woodland glade,
In hearts all undismayed,
Who Freedom's cradle laid
Beyond the sea.

Across the ocean wave,
Our land a refuge gave
From tyranny.
The hardy pioneers,
Baptized in blood and tears,
The child of hopes and fears,
Fair liberty.

I. What is a constitution? —

The constitution of a nation is its system of civil government. This system may or may not be written down in a formal document. In the one case, the nation is said to have a *written constitution*; in the other case, it is said to have an *unwritten constitution*.

It is frequently said that Great Britain has an unwritten constitution, and the United States a written one. This is near enough true for an epigram, but it is not strictly accurate. Great Britain has no written constitution covering its whole system of government, but the Bill of Rights, enacted in 1689, is a sort of constitution, as it establishes certain principles of freedom and determines who shall be king or queen. And some other acts of Parliament, of fundamental importance, may also be considered as parts of a written constitution. On the other hand, the United States has many things in its system of government which are not contained in the written constitution. Some of these are written in statute laws; others are simply a part of the political habits and ideas of the people which have grown to have the force of constitutions.

II. English constitutional liberty.— The Revolution of 1689 established constitutional liberty in England, and the same liberty was claimed by the colonies. This liberty was the outgrowth of many centuries of struggle against the kings, culminating in the revolt against James II and in the Bill of Rights.

III. The Norman conquest.—In 1066 the Norman French, led by William the Conqueror, conquered England and established a feudal aristocracy, with a powerful king at the head. The people had no rights, and were mostly serfs owned by their landlords. But the memory remained of old English liberties under King Edward the Confessor and his ancestor, Alfred the Great.

IV. Magna Charta.—In 1215 the tyranny of King John led to a revolt of the nobility, and a treaty between the king and his barons, called Magna Charta, or the Great Charter. There had already been charters given by kings to cities and monasteries, but this was the great charter for all England. In it the barons secured the feudal rights of the aristocracy, which was all they cared for; but Stephen Langton, Archbishop of Canterbury, who was not a Norman, but an Englishman, drew up the charter and put into it many things to protect the liberties of the common people. This charter was really a constitution, forced from an unwilling king. It was often violated by John and his successors, and as often new charters were granted, substantially the same as the original. The people had in these charters bills of rights, but no good way of compelling the kings to observe them.

V. Extracts from Magna Charta.—The great charter granted by King John, June 15, 1215, is occupied largely with protecting the rights of the feudal aristocracy; but the germs of the representative system and of the Bill of Rights can be found in the passages given below:

"No scutage or aid shall be imposed in our kingdom unless by the general council of our kingdom. . . . And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls and greater barons of the realm, singly, by our letters. And furthermore, we will cause to be summoned generally by our sheriffs and bailiffs all others who hold of us in chief, for a certain day, that is to say forty days before their meeting at least, and at a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

"Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted

freely and not denied. [This is the original of the writ of habeas corpus.]

"No freeman shall be taken, or imprisoned, or disseized, or out-lawed, or banished, or in any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

"We will sell to no man, we will not deny to any man justice or right."

VI. The first Parliament.—A little later Simon de Monfort, Earl of Leicester, headed a great revolt of a part of the aristocracy, and called on the common people for help. In 1265 he summoned a parliament of elected representatives to consult with him. He was killed in battle with the king's son, afterward Edward I, and the reform went back for a time, but the "good Earl Simon" and his parliament were not forgotten.

VII. Parliament becomes a power.—A little later the kings began frequently to summon Parliament for the purpose of levying extra taxes, in addition to the regular feudal dues, to help them in their long wars with France and Scotland. These Parliaments got into the habit of calling for a "redress of grievances" before they would grant a "vote of supplies," and little by little this grew into a power of making laws. In England the form still remains of the Parliament humbly petitioning the sovereign that he would graciously make a certain law. The reality has long been that Parliament enacts a law, and the king has to approve it.

VIII. Power of the purse.—But this power of making laws grew out of the power of levying taxes. Parliament bought one right after another by granting taxes or by threatening to refuse them, until at the close of the Middle Ages Parliament had become almost as powerful as the king. The liberties of Englishmen were guarded against any tyranny of the king by the Parliament, which consisted of the Lords Temporal, or titled nobles, the Lords Spiritual, or the bishops and mitred abbots, the two meeting together as the House of Lords, and the Commons, who were the elected rep-

resentatives of the gentry, that is of the lesser landlords, and of the governing bodies in the cities or boroughs. The common people had no voice in Parliament. In each city there was an aristocracy of wealth, which ruled it. In the country the landlords, great and small, barons and gentlemen, ruled about as they pleased on their own estates. The people in the country were no longer serfs. They had become farm laborers or tenant farmers, but they still had no political rights.

IX. The House of Lords weakened.—But with the accession of the Tudors and the end of the Middle Ages a great change took place. The War of the Roses had destroyed the power of the great nobles by death and by confiscation of their estates, and the Tudor kings took care not to make new nobles. The power of the House of Lords was thus weakened, while the House of Commons was not strong enough to attack the king alone. So the kings used Parliament now to carry out their wishes under the forms of law. The great secession of the Church of England from the Church of Rome was carried out by Henry VIII, by means of a subservient Parliament which only partly represented the people. The monasteries were destroyed, so that there were no longer any abbots in the House of Lords. The bishops were now appointed by the king, and were his most willing helpers. The king was the source of all political preferment, and ambitious Commoners did not care to oppose him. So Parliament was High Church under Henry, Puritan under Edward, Catholic under Mary, and under Elizabeth a compromise of all religious parties. Parliament changed with the personal wishes of the sovereign.

X. New power of the Commons.—But all this time the Commons were growing in power. Charles I provoked a contest with Parliament in such a way as to rouse the whole nation, and cause the election of Parliament after Parliament which the king could not control, thus teaching the Commons their power when united, a lesson they have never since forgotten.

The Commons finally revolted, and a civil war ensued between king and Parliament. The Parliamentary army under Cromwell finally overthrew Parliament itself, executed the king, and made Cromwell Protector—that is, king in all but name. On Cromwell's death the nation re-established both king and Parliament.

After the death of Charles II, his brother, James II, in three years succeeded in arraying against himself the whole nation, and the revolution of 1689 followed. His son-in-law, William of Orange, and his daughter Mary were made king and queen by act of Parliament.

XI. The English revolution.—

The revolution of 1689 firmly established the results of these centuries of struggle and growth, and incorporated them in acts of Parliament. It settled the following points, among others:

(*a*) That the king did not rule "by the grace of God," but by act of Parliament. This made the king the choice of the people, and settled the right of the people to rebel against unjust government.

(*b*) That the personal rights of Englishmen to life, liberty, and property, as stated in the Bill of Rights, should be secure against arbitrary power.

(*c*) That Parliament should be powerful enough to defend these rights against the king.

(*d*) That the power of taxation to support the government should be in the House of Commons.

(*e*) That judges should be appointed "for life or during good behavior." Previously to the revolution they had been appointed "during the king's pleasure." This

made the courts mere tools of the king. The revolution made them independent, and therefore protectors of justice.

These are among the main ideas of English constitutional liberty. The decisive battle was the English Revolution of 1689, though many features of the English constitution were secured before or after that date. On these ideas the American colonies based their resistance to English tyranny; and when they had secured their independence, Americans founded their new governments of the state and of the nation on the forms and principles of English constitutional freedom, except that they got rid of a king altogether and made a republican form of government.

XII. The Bill of Rights.—The Bill of Rights was adopted by Parliament, Feb. 13, 1688 old style, which is the same as Feb. 23, 1689. This bill recites the acts of King James II, to guard against which in future the bill is passed, declares that James has abdicated, elects William and Mary king and queen, and provides for the succession to the throne. The declaration of rights embodied in the bill is as follows:

"1. That the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of Parliament, is illegal.

"2. That the pretended power of dispensing with laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.

"3. That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissioners and courts of like nature, are illegal and pernicious.

"4. That levying money for or to the use of the crown by pretense and prerogative, without grant of Parliament, for

longer time or in other manner than the same is or shall be granted, is illegal.

"5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

"6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

"7. That the subjects which are Protestants may have arms for their defense suitable to their conditions, and as allowed by law.

"8. That election of members of Parliament ought to be free.

"9. That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

"10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

"11. That jurors ought to be duly impaneled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

"12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

"13. And that for redress of all grievances and for the amending, strengthening and preserving of the law, Parliament ought to be held frequently."

XIII. Parliament absorbs executive power.—There was thus a constitutional government established in England, with three separate departments—executive, legislative, and judicial—the executive still holding the place of honor. For a time the king appointed his cabinet officers; but later on Parliament secured for itself the power of appointing and removing

the heads of the executive departments, who are now always members of Parliament and the leading members of the party in power in the House of Commons. This change has taken away the executive power from the sovereign and placed it in the hands of Parliament. This later change was not completed in England at the time of the American Revolution, and it has never been imitated in the state or national governments of this country. Many of the earlier state governments during and after the Revolution, however, accomplished substantially the same results by having the legislature elect the governors, judges, and other state officers.

XIV. The colonial governments.—

The colonies of Great Britain which afterward became the United States of America had several different forms of government, all based on English ideas. But after the English Revolution of 1689, the English government reorganized them as far as possible on the English model. The appointed Governor, the appointed Council and the elected Assembly of most colonies corresponded to the hereditary King, the hereditary Lords, and the elected Commons. The colonists claimed the personal liberties guaranteed to Englishmen by the Bill of Rights. Each colony was thus a little constitutional monarchy, except Connecticut and Rhode Island, which were little republics. The three forms of government in the colonies were these:

1. *The Royal Provinces.*—In these the governor and judges were appointed by the king. The upper house

of the legislature was generally appointed by the governor, and only the lower house of the legislature was elected by the people. Both the governor and the king had a veto upon the laws. So that if the representatives of the people passed a law obnoxious to the royal party, it could be negatived by the upper house or vetoed by the governor or annulled at any time by the king. But no tax could be levied without the consent of the legislature. Virginia (after 1624) is the best example of a royal province.

2. *The Proprietary Colonies.*—In these the supreme power was vested in the proprietor, who was either a man or a company. The proprietor, if living in the colony, virtually ruled as king; or if in England, appointed a governor and other officers. Pennsylvania is the best example of a proprietary colony.

3. *The Chartered Colonies.*—In these the people elected their own governor and other officers, as well as the legislature. Connecticut is the best example of a chartered colony.

In general terms, with some exceptions, we may say that the New England colonies were chartered, the middle colonies proprietary, and the southern colonies were royal provinces.

XV. Germs of liberty.—

All these governments contained the germs of popular liberty. In all the colonies the people wished to govern themselves, and only submitted to the arbitrary restrictions of the king, and of some of the proprietors, because

they were compelled to. As soon as they rebelled against the English government in 1775, they at once expelled their royal or proprietary governors and elected governors of their own. They preferred the type of government of the chartered colonies, and adopted it as soon as they could. The state governments are now substantially of the form of government in the chartered colonies.

And when the people came to set up a true national government for the United States, they adopted the same general form. The changes that have been made since the adoption of this Constitution in the forms of the state and national governments, have been in the direction of popular representation and personal liberty.

XVI. The first state constitutions.—

The first state constitutions were adopted in 1776, upon the recommendation of the Continental Congress, when the Declaration of Independence was adopted. Up to this time the war had been a rebellion to secure a redress of grievances under the British government, and the Continental Congress and the various Provincial Congresses had been merely revolutionary bodies, not claiming any regular legal authority. The Continental Congress now assumed to be the organ of a nation, and asked the constituent states to establish regular governments. Thus, it was the nation which was historically first, not the states. These first state constitutions, hastily drawn and adopted during the war, were necessarily defective in many particulars, and after peace

came were changed for more carefully considered documents. Most of them, in trying to avoid arbitrary authority, made the same mistake which the Continental Congress did for the United States—they did not establish any real executive. All contained declarations of rights, based on the great English constitutional documents. The transition from the colonial method is marked by the peculiar method of organizing the new state governments. Under the royal governments the Assembly had been the only relic of popular representation. The government had been appointed by the royal authority, directly or indirectly. In these new state governments the Assembly, instead of asking the people to elect these officers, assumed the power as the people's representatives to appoint them itself. The people still elected the Assembly as before, but the Assembly elected the governor, the governor's council, and all the officers of the government. A property qualification was required of voters; in some states greater, and in some less. A higher property qualification was generally required of the legislators and of the governor and of other important officers. Only in New York and in the two chartered colonies, Connecticut and Rhode Island, which made no changes in their government, was the governor elected by the people.

XVII. The second state constitutions.— But within five years before and after the adoption of the United States Constitution, all the other northern and middle states had changed their constitutions so that

the governors were elected by the people, while in the southern states it was many years before that change was made. The election of two houses of the legislature by the people and the abolition of the governor's council, or its change from an upper house of the legislature to an advisory board for executive acts, came very early in most states, about the same time as the adoption of the United States Constitution.

XVIII. A national government.—

The Confederation adopted in 1781 was not a government at all in any real sense of that word. It was thirteen separate governments trying to work together. The only way to have a national government, and at the same time not abolish the state governments, was to do substantially what the Constitutional Convention did do. It created a national government in addition to the state governments, with the line between the powers of the nation and the state drawn as carefully as possible. The national government had three departments, executive, legislative, and judicial, and it was not a monarchy, but a republic in form. In these respects it was modeled from the state governments. Most of the details of its organization, also, were taken from the then existing state constitutions. In turn it has had a great influence upon the form and the phraseology of later state constitutions. Most of these details can be traced back to an English origin. Many of the details also were continued from the Articles of Confederation.

CHAPTER III.

EVENTS LEADING UP TO THE CONVENTION.

Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks; methinks I see her as an eagle mewing her mighty youth, and kindling her undazzled eyes at the full midday beam.—JOHN MILTON.

I. Washington leads in this Revolution.—The idea of a national government, instead of a confederacy of semi-independent state governments, was of slow growth. Washington was led to it by his experience during the war of the inefficiency of the Congress of the Confederacy either as a legislative or an executive body. When the war closed he refused to lead his soldiers in a military revolution to overturn the government, but devoted his energies for the next six years to carrying out the peaceful revolution which established a real national government. The bankruptcy of the weak general government because the states would not allow it to levy taxes, and the need of power to regulate commerce, were the principal influences which enabled a small majority of the people to finally establish the new government.

II. Thomas Paine.—Six months before the Declaration of Independence, in a pamphlet entitled "Common Sense," which contributed greatly to make public opinion in favor of independence, Thomas Paine had said:

"Nothing but a continental form of government can keep the peace of the continent. Let a continental conference be held to frame a continental charter, drawing the line of business and jurisdiction between members of Congress and members of Assembly, always remembering that our strength and happiness are continental, not provincial. The bodies chosen conformably to said charter shall be the legislators and gov-

ernors of the continent. We have every opportunity and every encouragement to form the noblest and purest constitution on the face of the earth."

III. Hartford convention.—In 1780, before the war ended while the Articles of Confederation were pending, and before they were finally adopted, a convention was held at Hartford of delegates from the New England states and New York, which the student should not confuse with a later Hartford convention. They sent a circular letter to all the state legislatures and to Congress, in which they said:

"Our embarrassments arise from a defect in the present government of the United States. All government supposes the power of coercion; this power, however, never did exist in the general government of the continent, or has never been exercised. Under these circumstances the resources and force of the country can never be properly united and drawn forth. The states individually considered, while they endeavor to retain too much of their independence, may finally lose the whole. By the expulsion of the enemy we may be emancipated from the tyranny of Great Britain; we shall however be without a solid hope of peace and freedom unless we are properly cemented among ourselves."

In 1782 the legislature of New York asked Congress to call a convention to revise and amend the Articles of Confederation, which Congress failed to do.

IV. Lack of revenue for general government.—The same year, after all the other states had agreed to a measure to give the general government a permanent revenue from duties, the one thing absolutely needed then, Rhode Island unanimously rejected the plan, and thus defeated it.

The lack of revenue bore hardest on the army, which suffered for food and clothes, and had not been paid. Early in 1783, a delegation of officers was sent to Congress with an address calling for pay due the soldiers. The delegation spoke very decidedly about the need of a stronger government. "A hoop to the barrel" was a favorite toast in the army at that time, meaning a stronger government. A move-

ment was made in the army, instigated by other public creditors, to secure by force the payment of debts due by the general government. This meant a military revolution. Washington, by his personal influence, turned the officers from their purpose. The news of peace came a few days after, and allowed the army to disband, but not before some Pennsylvania soldiers had mutinied because unpaid, and had driven Congress from Philadelphia to Princeton.

V. Washington's letter to the governors.—When the army was disbanded, Washington, in June, 1783, sent a letter to the governors of the states, to be communicated to the legislatures, in which he urged that the soldiers and other creditors be paid, and that a stronger government be established in order to secure this. This letter was published in the newspapers, and had great influence. Most of the legislatures adopted addresses to Washington in reply. The soldiers, who had been turned from mutiny and revolution by Washington's influence, were sent home by him as missionaries in favor of a stronger union. All through, the ex-soldiers of the revolution were among the firmest supporters of the new constitution. Washington refused to lead in a military revolution, but was the leader in this peaceful revolution.

VI. Need of commercial power.—Next to the need of power in the general government to raise revenue was the need of power to regulate commerce, so as to protect commerce and manufactures from the competition of England. The cities of Boston, New York and Philadelphia were specially interested in this, and held public meetings in favor of giving Congress power to regulate commerce. The legislatures of several states, beginning with Massachusetts, asked for a convention to amend the Articles of Confederation. The opposition to such a movement now began to organize under the leadership of Richard Henry Lee, of Virginia, President of Congress.

In 1785 commissioners from Virginia and Maryland met at Mount Vernon, Washington's home, and arranged a compact

between the two states relating to the navigation of the waters common to both states. This led to a meeting of commissioners from the states at Annapolis, in 1786, to consider commercial regulations.

VII. The convention called.—The convention at Annapolis had representatives from only half the states. Its only action was to call a constitutional convention to meet at Philadelphia on the second Monday of May, 1787.

Congress had claimed the legal right to propose amendments to the Articles of Confederation, but had done nothing, and now declined to indorse this call. The states proceeded to elect delegates without regard to Congress. Virginia led off with a delegation headed by Washington. Other states rapidly followed, till finally Congress was forced to call a convention at the time and place already named, thus giving its legal authority to what was going to be done anyway. Rhode Island alone refused to send delegates.

Meanwhile Shay's Rebellion in Massachusetts showed the need of a stronger central government to support the states against insurrection.

CHAPTER IV.

THE CONSTITUTIONAL CONVENTION.

Great were the hearts, and strong the minds,
Of those who framed in high debate
The immortal league of love that binds
Our fair broad empire, state by state.

Wide as our own free race increase,
Wide shall extend the elastic chain,
And bind in everlasting peace
State after state, a mighty train.

—W. C. Bryant.

I. The Constitutional Convention.—

The convention was composed of some of the ablest men in America, and was fairly representative of the various interests involved. The Constitution which they produced after four months' discussion, was in general upon the familiar lines upon which the state constitutions had been drawn. That is, it embodied the ideas and forms of English constitutional liberty, but changed from a monarchy to a republic. The one essential novelty, which was a necessity of the situation, was that it established a strong national government, without overthrowing the strong state governments. This was a new idea in civil government. This idea of a federal state much stronger than a mere confederacy has been imitated since by many nations.

II. The convention meets.—The convention met in Philadelphia, May 14, and adjourned from day to day till a quorum appeared May 25, when Washington was elected the presiding officer. The sessions were held in secret.

III. The Virginia plan.—May 29, Randolph, the governor of Virginia, presented the resolutions which had been agreed on by the delegation from that state, then the largest state in the Union. These resolutions were soon known as the "Virginia plan," and formed the basis on which the Constitution was actually drawn.

IV. Discussion in committee of the whole.—The next day Randolph moved in committee of the whole "that a national government ought to be established, consisting of a supreme legislative, executive and judiciary." This was carried with little opposition. The need of a real national government was felt by all, and the division into departments was familiar to all in the state governments. The differences to come were on the details of the plan.

Hamilton then moved that "the right of suffrage in the national legislature ought to be proportioned to the number of free inhabitants." Madison said: "Equality of suffrage [*i. e.*, between states] may be reasonable in a federal union of sovereign states; it can find no place in a national government." The question was postponed. That and the disputes over slavery caused the most serious differences in the convention.

It was agreed unanimously that the national legislature should consist of two branches. All the states except Pennsylvania had two houses in their legislature.

It was agreed, with some differences, that the lower house of the national legislature should be elected by the people directly.

It was agreed unanimously that the national legislature should at least have the powers then exercised by Congress. The real question was what additional powers should be granted; but at this time substantially the powers named in the Virginia plan were also agreed to, which were much greater than those given in the Articles of Confederation.

In respect to the executive there were great differences of opinion. Finally a single executive, instead of a council of three, one for each section of the country, was adopted by the vote of seven states, just enough; Washington's vote broke a tie in the Virginia delegation, and thus his single vote carried this important point. A limited veto was given the executive.

The organization of the judiciary was carried without trouble, by leaving the question of the inferior courts to Congress to decide later.

The large states demanded that they should be represented in the Senate in proportion to their size, to which the small states objected; but it was carried over their objections.

The Virginia plan was thus substantially adopted in committtee of the whole. Before the final vote on the proposed plan as a whole, Connecticut and New Jersey each presented

plans giving the general government much less power than the Virginia plan did.

Lansing, of New York, who favored the New Jersey plan, said: "The New Jersey system is federal; the Virginia system is national. In the first, the powers flow from the state governments; in the second, they derive authority from the people of the states, and must ultimately annihilate the state governments."

As an offset to the New Jersey plan, Hamilton, also of New York, avowed his preference for the British constitution, but read a plan of his own, providing an executive elected for life, and state governors appointed by the general government. Pinckney, of South Carolina, also read a plan not essentially different from the Virginia plan. But the convention, still acting in committee of the whole, adopted the Virginia plan as amended, by the vote of seven states—just enough.

V. The Connecticut compromise.—In convention proper, the same ground was again gone over from June 19. The small states still insisted that the voting in each house of Congress should be done by states on the plan then in use in Congress, and followed in the convention itself. But as this would equalize the votes of the states, the large states opposed it. Finally the compromise was adopted that the first branch of Congress should have one member for every forty thousand inhabitants, counting all the free persons and three-fifths of the rest; that in the second branch each state should have an equal vote, and that in return for this concession to the small states the first branch should have the sole power of originating taxes and appropriations. After a great deal of discussion and all kinds of propositions, this compromise was adopted, July 16, by a majority of one state. Madison said that from that time, when the small states were assured of an equality in the Senate, they exceeded all others in zeal for granting powers to the general government. It will be noticed that they were also the readiest to ratify the Constitution.

VI. Committee on Detail.—Additional powers of legislation were then agreed to, and the convention put the matter of making a complete constitution in the hands of a Committee on Detail, who followed, very largely, methods and forms of expressions found in the state constitutions. Printed copies of the Constitution as prepared by the Committee on Detail were provided August 6, with wide spaces for amendments. These, however, were not furnished to any but members, as all the proceedings up to this point had been kept secret from the public.

VII. The slavery compromise.—Other changes were now made. South Carolina and Georgia forced the compromise on the slave trade by the threat that they would not ratify the Constitution unless they were protected against the general feeling in the other states, including Virginia, against slavery and the slave trade. This was no idle threat of the delegates, for it was well known that they represented their people on this point, and these states were absolutely needed to the new constitution. Without them it could not have been carried or ratified by the people of the states afterward.

VIII. Election of President.—The manner of election of the President puzzled the convention. In some states the governor was elected by the people, but in most by the legislature. The convention was long inclined to follow the latter method for the chief executive of the nation, but near the close at last adopted the plan of choice by electors, chosen as each state pleased, as a compromise to keep the executive independent of Congress, and yet not elected by the people.

IX. Closing scenes.—The article on judiciary and the rest of the Constitution was adopted without serious differences. The last thing done was to enlarge the House of Representatives by a change from a basis of 40,000 to one of 30,000 population. Washington made his only speech in the convention in favor of this change.

September 17, the Constitution was signed by most of the members present. The majority of the New York delegation

had withdrawn in disgust when the convention was half over, and several members, including Randolph, refused to sign it, because it gave too great powers to the general government.

X. The general plan of the Constitution.—The Constitution has a regular and logical arrangement, for which we are indebted partly to the clear distinction between the three great departments of government kept in view throughout the whole time of the convention, and partly to the Committee on Style, of which Governeur Morris was chairman, which arranged the Constitution logically, and struck out all repetitions and superfluous matter, and made the language as precise and concise as possible.

CHAPTER V.

THE RATIFICATION OF THE CONSTITUTION.

I am glad to learn by letters which come down to the twentieth of December, that the new constitution will undoubtedly be received by a sufficiency of states to set it a going. Were I in America, I would advocate it warmly till nine should have adopted, and then as warmly take the other side to convince the remaining four that they ought not to come into it till the declaration of rights is annexed to it; by this means we should secure all the good of it, and procure as respectable an opposition as would induce the accepting states to offer a bill of rights.* This would be the happiest turn the thing could take. I fear much the effects of the perpetual re-eligibility of the President, but it is not thought of in America, and have therefore no prospect of a change of that article; but I own it astonishes me to find such a change wrought in the opinions of our countrymen since I left them, as that three-fourths of them should be contented to live under a system which leaves to their governors the power of taking from them the trial by jury in civil cases, freedom of religion, freedom of the press, freedom of commerce,

*He evidently did not have a copy of the constitution, or he would not have held certain things as needed in a bill of rights which were already in the constitution.

the habeas corpus laws, and of yoking them with a standing army. That is degeneracy in the principles of liberty to which I had given four centuries instead of four years, but I hope it will all come about. We are now vibrating between too much and too little government, and the pendulum will rest finally in the middle.—THOMAS JEFFERSON, from Paris, Feb. 2, 1788.

I. Washington's letter of transmittal.—

September 20 the proposed Constitution, with Washington's letter of transmittal, was read before Congress, then sitting in New York. The letter stated:

"It is impracticable in the federal government of these states to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all; it is difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved. On the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests. We kept steadily in view the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. And thus the constitution which we now present is the result of the mutual deference and concession which the peculiarity of our political situation rendered indispensable."

II. Opposition of Congress.—

There was great opposition in Congress to the proposed Constitution, led by Richard Henry Lee, the president of Congress. But after a heated contest, Congress decided to send the Constitution to the state legislatures to be submitted to conventions in the several states. Lee wrote a series of pamphlets against the Constitution, called "Letters from a Federal Farmer." In reply, Madison and Hamilton and Jay wrote the series of pamphlets called "The Federalist."

III. Delaware and Pennsylvania ratify.—Delaware acted as rapidly as possible, and on December 6 its convention ratified the Constitution unanimously.

In the Pennsylvania legislature the time for adjournment had almost come before the action of Congress was received. The opposition broke a quorum by staying away from the closing sessions, but the people of Philadelphia captured two country members and brought them by force to the state house to make a quorum by their presence, although they refused to vote, so that the majority could pass the act for a convention. The same division was reflected in the vote in the convention on December 12, which was 46 to 25. The opposition came from the frontier west of the Susquehanna. The minority refused to sign, and published a remonstrance. A little later the Whisky Rebellion was attempted by the same people who now opposed the Constitution.

IV. New Jersey and Georgia ratify.—New Jersey ratified the Constitution unanimously December 18, being, like Delaware, a small state.

Georgia ratified it unanimously January 2. Georgia was then a small state, but in the convention its delegation had voted with the large states on the ground that the immense territory of this state, then stretching west to the Mississippi, would make them a large state in population soon. But Georgia needed the aid of a strong general government to protect its southern and western border against Spain, which then held all the Gulf coast and all west of the Mississippi.

V. Connecticut ratifies.—Connecticut ratified January 9, by a vote of 128 to 40. Connecticut was at this time of moderate size, and on all questions between the large and small states its delegation had been inclined to a medium course. They had proposed the compromise of giving the lower house to popular vote according to numbers, and the upper house to equality between the states. Some echoes of Shay's Rebellion in the Connecticut valley had spread beyond Massachusetts and led many farmers in the neighboring state to fear a strong government.

VI. Massachusetts ratifies.—The Massachusetts convention, after a long and careful consideration, ratified the Constitution by 187 to 168, but proposed amendments to it embodying a Bill of Rights. Except for that recommendation, it would have been defeated. The opposition came from the back country. Both in Massachusetts proper and in Maine, then a part of Massachusetts, the commercial and manufacturing sections were strongly for the Constitution, and the agricultural sections mostly against it. Shay's Rebelliou added intensity to the feeling. Several of the members of the convention had been in that rebellion a little over a year before, and now voted against a strong national government, as they had fought against a strong state government.

VII. Maryland and South Carolina ratify.—In Maryland the opposition in the legislature debated the Constitution, aided by some of the Maryland delegates to the national convention, and secured a delay of six months before calling the convention. But this gave opportunity for a thorough canvass of the people by both sides, and the convention ratified the Constitution April 25, by vote of 63 to 11.

There was a similar delay in South Carolina, with a like result. Ratification took place May 23, by a vote of 149 to 73. The opposition was in the back country.

VIII. Virginia ratifies.—The decisive contest was fought in Virginia, where were the leaders of both sides. Washington and Madison for the convention were opposed by Richard Henry Lee and Patrick Henry against it. Elsewhere the business and professional men were almost unanimously for the Constitution; but in Virginia they were divided. The opposition had hoped to make a Southern Confederacy, but the action of South Carolina had destroyed that hope. The interest in the Virginia convention was so great that the Philadelphia papers sent short-hand reporters to take the debates, an unheard of thing in those days. The debates lasted three weeks. At last, June 25, the convention ratified the Constitution by a vote of 89 to 79. The opposition came from the western part of the Atlantic slope and from Kentucky, then

a part of Virginia. The older settled parts along the Chesapeake and Potomac and the Shenandoah valley supported the Constitution. Virginia recommended a Bill of Rights to the first Congress, to be proposed as amendments. Without this, the Constitution would probably not have been ratified by Virginia.

IX. New Hampshire ahead of Virginia.—The convention of Virginia supposed that they were the ninth state, and that they therefore put the Constitution into active life; but the New Hampshire convention had met, and adjourned to consult with their constituents. A majority had been instructed to vote against the Constitution, but its friends had converted several members, and they had to have new powers from their towns. With these new powers, on June 21 they ratified, 57 to 46. They took pains to insert in the record that the vote was taken at one o'clock in the afternoon, that in case Virginia should ratify the same day at a later hour they could hold the honor of being the ninth state.

X. New York ratifies unwillingly.—In New York the interior was unanimously against the Constitution, because it abolished the state custom house, by which the state government was supported without direct taxes, at the expense of the people of neighboring states, who had to pay higher for imported goods. For that very reason New Jersey had been unanimously in favor of the Constitution. But the people of New York city and the neighborhood were strongly for the Constitution, because their rising commerce needed the protection of a strong national government. New York was the place where Congress then met, and a number of the members of Congress worked with the collector of customs of New York to influence New York and other states against the Constitution. As a part of the scheme of the opposition, the legislature called the convention late. The large majority of the delegates were opposed to the Constitution, and Governor Clinton, who was opposed to it, was made presiding officer. But the ratification of Virginia, making the tenth state, broke the plans of the opposition. Nine states

would set up the new government anyway, and the opposition did not really dare to stand out. The attempt was made to ratify with the reserved right to the state to withdraw. Hamilton, who was a member of the convention sitting at Poughkeepsie, wrote to Madison, by this time again in his place in Congress at New York, on this point, and Madison wrote back a letter to be read to the convention, that a conditional ratification was no ratification at all. "The Constitution requires an adoption *in toto* and forever. It has been so adopted by the other states." It will be noticed that this opinion was completely against the right of secession. On July 26 the Constitution was ratified by New York by a vote of 30 to 27, by a compromise agreeing to a resolution that a letter be sent to all the state legislatures, recommending another convention to act on proposed amendments.

XI. North Carolina reluctantly falls into line.—The North Carolina convention, August 1, deferred ratifying, and proposed amendments. Washington advised this rather than have them reject the Constitution. The next year, Nov. 21, 1789, North Carolina ratified, but not in time to take part in the first election of President.

XII. Rhode Island forced to ratify.—Rhode Island had persistently refused to send delegates to the convention, and refused to take any action in favor of the Constitution. Among other reasons, was the local fight over the issue of paper money by the state, in which the legislature had overridden the supreme court. The people of Rhode Island clung to paper money as a remedy for hard times, and this was one of the things on which the convention had been nearly unanimous. The experience of the irredeemable and worthless continental currency, besides similar state issues of paper money, had convinced most people that paper money ought to be forbidden, as it was supposed to be by the Constitution. This, with other reasons, made the majority of the people of Rhode Island who favored state paper money oppose the Constitution. It was not until the new Congress in session at New York sent them word that they would be

compelled to pay their share of the Revolutionary War debt, and that their commerce would be shut out from United States ports by prohibitory duties if they staid out of the Union, that Rhode Island gave up and came into the new Union by ratifying the Constitution, May 29, 1790.

XIII. The new government organized.—As soon as the ninth state ratified the Constitution, Congress proceeded to make arrangements for putting the new government into operation. Elections were held for Presidential electors, and for Senators and Representatives, and March 4, 1789, was set as the day on which the new government should be organized, and New York as the place. Meanwhile two more states had ratified the Constitution, so that only North Carolina and Rhode Island still stood out. The government did not actually go into operation on March 4, owing to the difficulties of traveling in those days. But Congress met, and waited until April 1 for a quorum. April 6, the electoral votes for President and Vice-President were counted by a President of the Senate, (John Langdon, of New Hampshire,) who was elected for that purpose by the Senate. John Adams entered on his duties as Vice-President April 21, and George Washington as President April 30.

XIV. The Bill of Rights added.—The first Congress, under the lead of Madison, proposed, and the state legislatures adopted, a series of amendments as a Bill of Rights. This Bill of Rights had been promised by the friends of the Constitution as a condition of its ratification by the two leading states, Massachusetts and Virginia, and their adoption, therefore, completed the history of the ratification of the Constitution.

CHAPTER VI.

THE INFLUENCE AND GROWTH OF THE UNITED STATES CONSTITUTION.

I. Effect of our Constitution on Europe.—

The United States was the great pioneer in the line of written constitutions. The written constitutions of European and American countries have all been made since ours, and many of them have been expressly modeled after ours.

In 1783 Franklin, then ambassador to France, had all our constitutions translated into French and published. In 1787 the new Constitution for the United States was published in France. These two publications attracted deep interest in France, and in Europe generally. They led to a great deal of discussion. And the idea of a fundamental written law formulated by the nation itself, and designed to protect it from the abuses of despotism, soon commended itself to all thinkers. And from this time on began the era of written constitutions as safeguards of liberty.

At a later date the federal idea was imitated in many governments, both republican and monarchical. Among these are Switzerland, which changed from a loose confederation to a federal republic; the Empire of Germany, which is a federal state organized out of the nearly independent states of Germany; and the Domin-

ion of Canada, which is a federation of colonies. The idea of a federal union, not a mere confederation, was original in the United States Constitution, and was a new discovery in the art of government.

II. The unwritten Constitution.—

The only effective constitution is not a form of words on paper, but the settled convictions of the people, expressed in their political habits and ideas. As these slowly change from time to time, the real constitution changes. In the century since the Constitution was adopted it has been changed not only by the formal amendments, but much more by the progress of thought, which has changed the interpretation and the application of the original language.

The two great lines of change have been the democratic movement and the national movement. The democratic movement took possession of the general government under Jackson. Before and after that time there were a series of changes that reorganized the state governments. The property qualifications for voting and holding office were removed, so that laboring men, as well as the wealthy and the middle classes, could have a voice in the government. This, of course, affected the elections for Representatives in Congress and for Presidential electors, as well as the state elections. County and state officers in many states were also elected by the people, instead of being appointed by the legislature or the governor. This made local self-govern-

ment a primary school for voters, so that they voted more intelligently on national matters.

The civil war brought with it the issues of slavery and of secession. Both were destroyed by the war. The abolition of slavery changed the basis of representation in the House of Representatives and in the electoral college, giving the South a larger vote in Congress and for President. Secession was effectually killed, and now North and South both favor greater power for the national government than Washington would have ventured to urge. The national interpretation of the Constitution culminated in the civil war, and the triumph of the national government over the seceding state governments. The tendency now is against any further increase of power of the national government.

Part II.

The Organization of Congress.

There the common sense of most shall hold a fretful realm
in awe,
And the kindly earth shall slumber, lapt in universal law.
—TENNYSON.

And sovereign Law, the state's collected will,
Sits empress, crowning good, repressing ill.
—SIR WILLIAM JONES.

ARTICLE I.

SECTION I.—IN WHOM THE LEGISLATIVE POWER IS VESTED.

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.

I. Departments of government.—

The government of the United States is divided into three departments, Legislative, Executive, and Judicial. The legislative department is that part of the government which *makes* the laws; the executive is that part which *carries out* and *enforces* the laws; and the judicial is that part which *applies* and *interprets* the laws. These departments are not kept quite distinct, but, as we shall see, the legislative department exercises some judicial functions, and the executive exercises some legislative functions. But these are exceptions to the general rule. Of these three departments the legislative is the most important and has the most power. It therefore needs to be guarded with the greatest care, to prevent its usurping power. For this reason it is divided into two houses, that each may be a check upon the other; for this reason, the President has a veto; and for this reason, the members of the lower house are re-elected frequently, to make them feel their responsibility to the people. By these expedients, the legislative department

is restrained from usurping power that does not belong to it.

II. Why there are three departments.—In this division of the powers and duties of government, the framers of our Constitution followed the form to which the people of the United States had always been accustomed. The government of England was divided into these three departments. The legislative power was vested in the Parliament, consisting of a House of Lords and a House of Commons; the executive power was vested in the King and his Cabinet ministers; and the judicial power was vested in the judges. This division of powers was not exact and logical, but each branch of government exercised some powers that logically would belong to the others, because it had been found in practice that it worked well so. The King had a legislative power in the veto, as the President also has; the House of Commons had a judicial power in presenting impeachments, and the House of Lords in trying them, just as the House of Representatives and Senate now have.

The colonies had naturally adopted forms of government not differing much from that of England, and had found them to work well. And when a national government for the United States was formed, the same division of powers was adopted without any serious question, because the people were accustomed to it, and because experience had shown it to be the best way to divide the powers of a government.

As long as the United States was only a confederation of semi-independent states, a congress of delegates was enough without an executive or a judiciary. But as soon as the United States was made a nation, the three departments of government were made necessary.

III. All constitutional governments have this division of power.—All constitutional governments, whether republics or limited monarchies, now have the same division of the powers of government between the legislative, the executive and the judicial departments. In most of these governments

there is a conscious imitation of either the English or the American plan of government, and their constitutions are modeled pretty closely upon these. This is natural, as the English and the American governments were the first successful attempts at representative government in the modern sense of the word.

Before the American Revolution, Montesquieu, a celebrated French writer, in his "Spirit of the Laws," had taken the English government as the greatest free government then existing, and had held up its division of the forms of government between the legislative, executive and judicial departments as the ideal. Some of the leaders of the Constitutional Convention were familiar with this book. Blackstone's Commentaries, which was then and still is a very important authority on English law, insists on the same division of powers as necessary to a free government.

IV. Congress.—

The name Congress was the name given to the delegates from the colonies under the Articles of Confederation. This name was retained for the legislative body of the United States under the Constitution. The names Senate and House of Representatives were in use in several of the state legislatures, and are taken from them.

V. General plan of this article.—

This article is put first, because it is the most important and the longest article in the Constitution. A republican government is a government of *laws*, not a government of *men*. And therefore in such a government the most important part is to make the laws, which is the duty of the legislative department of the govern-

ment. Laws must be made by the legislative department before they can be executed by the executive department, or before cases can arise under them to be brought before the judicial department.

VI. Division of this article.—This article is divided into ten sections, as follows:

1. States in whom the legislative power is vested.
2. Treats of the House of Representatives.
3. Treats of the Senate.
4. Treats of the elections and sessions of Congress.
5. Treats of the powers of each house separately.
6. Treats of the privileges of members.
7. Treats of the process of making laws.
8. Treats of the powers of Congress.
9. Treats of the prohibitions on Congress.
10. Treats of the prohibitions on the states.

Of these the first seven sections deal with the organization of the legislative department, and the other three with the powers of legislation. Each section is subdivided into clauses.

VII. Is it best to have two houses?—Bicameral legislatures (that is, legislatures composed of two chambers) have been generally adopted in all the representative governments which have imitated the English and American models.

The legislatures of early republican France were sometimes composed of one house and sometimes of two houses. Pennsylvania at the time of the adoption of this Constitution had a legislature of one branch only. Franklin, who had been President of Pennsylvania, that is governor elected by the legislature, from his experience opposed a legislature so organized. It is reported that when asked during the session of the Constitutional Convention which plan he favored, he poured out some tea from his teacup into the saucer, and said that two houses were necessary for the same reason as a cup and saucer, in order to allow hot legislation to cool.

SECTION II.—THE HOUSE OF REPRESENTATIVES.

Clause 1.—Organization.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

I. Representatives are chosen by the people.—In a free country the people govern. Even in a limited monarchy the representatives of the people have some voice in the government. In a republic all officers, in one sense, are representatives of the people, for they are chosen directly or indirectly by the people, and they are responsible to the people.

But in a special sense the members of the lower house of Congress are called Representatives, because they specially represent the people. Each Representative is chosen to represent the people of his state or district. As the people cannot all go to the capital and help to make laws, certain persons are chosen to do the work of legislation for them.

If each Representative represents his state or district, then all together will represent the people of the United States. If the people of a district are divided on certain questions, then their Representative will usually represent the majority of the people of his district. Indeed, he will be chosen over his competitors for the very reason that he does represent the majority of his district on the leading questions of the day. And a

majority of the House of Representatives will thus be almost certain to represent a majority of the nation on all the leading questions of the day.

II. They are chosen for a short term.—

Representatives are chosen for two years, so that they may be responsible to the people. If a Representative does not truly represent in Congress the people of his district, they need not have him as their Representative longer than two years. Every two years the people have an opportunity of choosing Representatives anew. It is not meant that a new person should be chosen every two years, but only that the people should have an opportunity of indorsing or of rejecting their Representative every two years.

III. Qualifications of voters left to the states.—

When the Constitution says that Representatives shall be chosen by the *people* of the several states, it means by the *voters*, as representing the people. As a fact, not more than one-fourth of the people are actual voters.

When the Constitution was adopted, the states required different qualifications of voters, as they still do. The United States establishes no uniform qualification for voters, but leaves that mattter to the several states. Each state, then, in fixing the qualifications required of those who vote for the lower house of its legislature, also gives the same persons the right to vote for members of the lower house of Congress.

IV. Two restrictions on state power in determining who shall vote.—Two restrictions have since been added. By the Fifteenth Amendment, negroes cannot be forbidden to vote because they are negroes. Any reason which would disqualify a white person will also disqualify a negro, but no other reason will. This provision affects elections for Representatives, as it does all other elections, state and national.

And by the Fourteenth Amendment it is provided, that where a state excludes any considerable part of its inhabitants who are male citizens of the United States over twenty-one years old, for any cause except crime or rebellion, that the number of representatives to which that state is entitled shall be proportionately diminished. This was intended to prevent states from disfranchising negroes; but it would also work against a property or educational qualification. It virtually establishes manhood suffrage throughout the United States. No case has ever arisen under this amendment by which the representation of a state has been diminished.

V. Disputed questions.—1. *Ought a Representative to vote as the majority of his constituents wish?* There are three questions involved, (*a*) the legal power, (*b*) the inducements to the Representative, (*c*) the moral right.

(*a*) The legal power is plain. Once elected and sworn in, no legal power can coerce a Representative to vote except as he himself chooses. He is absolute master of his vote.

(*b*) But powerful inducements are put before him to determine his vote. There is first his past record, with which he wishes to be consistent if possible; and his pledges to his constituents expressed or implied in his acceptance of a nomination by a certain party. There is, second, his present relations to personal and political friends at home, and in Congress, whose friendship he wishes to retain, and whose help he expects to ask for in projects of his own. This is made very powerful by the institution of the *caucus*. And last, but not least, are his hopes for his political future, which will depend largely upon his votes in Congress. These induce-

ments generally cause Representatives to follow either their party leaders or the expressed wish of their constituents.

(*c*) But the moral question is a harder one to answer. Usually it is the obvious duty of a Representative to vote as the majority in his district wish him to vote. But there may come occasions when he ought to go contrary to his constituents. He ought not to vote for injustice or dishonesty because his constituents demand it. Nor ought he to vote for anything contrary to the real interests of the nation out of a narrow and selfish policy. He is legislating not merely for his district, but also for the nation, and above all for truth and justice.

2. *Should Representatives be changed frequently*? It is very poor policy for the people of any district to change their Representatives often or for frivolous reasons. The longer a Representative is in Congress, the more influence he gains there. It is almost impossible for a Representative in the first term of his office to do more than vote. The real work of Congress is done in the committees, and members win their places on important committees by long service more than by ability. The longer a district sends a man of ability and integrity to Congress, the more influence he, and therefore his district, will acquire over the business transacted in the House.

It is one of the sophistical maxims of our politics, that "rotation in office" is a good thing. It is a good thing for the politicians, because it gives more of them a chance to get positions, but it is not a good thing for the people, who are worse served thereby. Rotation of Representatives is only a good thing where a Representative is corrupt or incompetent, or fails to represent his district on the great questions of the day.

CLAUSE 2.—QUALIFICATIONS OF REPRESENTATIVES.

No person shall be a Representative who shall not 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 of that state in which he shall be chosen.

I. Age.—

A Representative in Congress must be at least twenty-five years old. The object of requiring this is to secure a little more maturity of character and experience of political life than is required of a voter. Most of our Representatives are much older than twenty-five. In the British Parliament a member of either house must be twenty-one years old. The same age is required in most of the state legislatures.

II. Citizenship.—

A Representative in Congress must have been at least seven years a citizen of the United States. A natural born citizen will of course have been twenty-five years a citizen when he reaches the age of twenty-five. But a naturalized citizen must have been naturalized at least seven years, whatever his age, before he can be a Representative in Congress.

As the least time under our naturalization laws in which a foreigner can become a citizen is five years, it follows that the least time in which a foreigner, after reaching this country, can become a Representative, is five plus seven, or twelve years. The reason for requiring so long a citizenship is in order that the naturalized

citizen may become familiar with our institutions, and outgrow at least in part the political ideas he may have brought from another land.

III. Inhabitancy.—

A Representative must be, when he is elected, an inhabitant of the state from which he is chosen; that is, he must live in it.

It is not necessary that a Representative should have lived any time in the state from which he is elected. But he must be an inhabitant of that state when elected.

But it is not required that a Representative shall be an inhabitant of the *district* from which he is elected. Although the usual practice is to elect from each district an inhabitant of that district, there have been several cases of Representatives being elected who were not inhabitants of their districts.

The reason for requiring the Representative to be an inhabitant of the state, is that the Representative may be familiar with the local interests and needs of his state.

In Great Britain no qualification is required in regard to residence, and every House of Commons contains many members who do not reside in the county or borough for which they are elected. The same is the case in France, and in most countries which have representative governments.

IV. Disqualifications.—

The Constitution also prescribes the following disqualifications:

1. No person holding any office under the United States can be a member of Congress during his continuance in office. (I, 6, 2.)

2. No person who violates an oath to support the Constitution by engaging in rebellion against the United States can be a member of Congress, unless this disability is removed. (Am. XIV, 3.)

V. Some disputed questions.—The following questions have been raised at various times:

1. *Can a state provide additional qualifications for its Representatives?* No; for that would be giving a single state the right to amend the United States Constitution. A state can no more add other qualifications than it can require less. This has been decided by the House of Representatives, under the powers given it by section 5. Similar cases have been decided the same way by the Senate.

2. *Can a person be elected who is not twenty-five years of age?* Yes, if he become twenty-five years of age before he takes his seat. And the House even went so far in one case as to admit a member who was not twenty-five when the first session of the House began. He had to wait a few weeks until he was of the required age, and then he took his seat.

3. *Can a person be elected a Representative who has not been a citizen seven years?* Yes, if he shall have been seven years a citizen before taking his seat.

This is on the same principle as the last case.

4. *If a Representative should remove from his state after being elected would he lose his seat?* No; for the Constitution only specifies that he shall be an inhabitant of the state when elected.

5. *Can an ambassador be chosen to Congress while absent from the United States?* Yes; for he has not lost his inhabitancy in the state from which he was appointed.

6. *If an ineligible person receives a majority of votes, does his competitor take his place*? No; in that case no one is elected. There is a vacancy to be filled by a special election. If A and B are candidates, and A receives a majority of the votes but is not eligible for the office, he cannot take his seat. But B was not elected, and has no claim upon the place even if A is not eligible.

7. *Is a person eligible to Congress while holding a United States office and living at Washington or elsewhere outside of his own state*? This turns upon the distinction between inhabitancy and residence, which in most cases are the same, but in this case are different. A clerk in the service of the United States at Washington, and living there, was elected to Congress, and the House of Representatives decided that he was not an inhabitant of the state from which he was appointed, but of the District of Columbia, although he could still vote in the place from which he came to Washington, because he retained his residence there. The same reasoning would apply to all similar cases. Many such clerks and officers living in Washington go home to vote at each election. In the case of a foreign minister it was decided that he had not lost his inhabitancy, on account of the fiction of international law which makes a minister or ambassador carry the sovereignty of his country with him.

Clause 3.—Apportionment of Representatives.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, [which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and] excluding Indians not taxed, [three-fifths of all other persons]. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; [and until such enumeration shall be made, the state of New

Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.]*

I. The article as amended by the Thirteenth and Fourteenth Amendments.—If we should reject all obsolete matter, and should change to correspond with Amendments XIII and XIV, this clause would read as follows:

"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 Representatives in Congress is denied to any of the male inhabitants of such state being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crimes, the basis of representation 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. The actual enumeration shall be made every ten years, in such manner as Congress 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."

II. States represented according to population.

As the Representatives are to represent the people, it is only fair that the states should have Representatives according to the people who are represented.

In England, at the time our Constitution was adopted, the several counties and cities (shires and boroughs) were represented very unequally in Parliament. In 1832, the great Reform Bill was passed, which reapportioned the members of

*The parts of this clause in brackets are now obsolete.

Parliament so as to give a reasonably fair apportionment to the various counties and cities. Several different acts have since been passed making smaller changes in the apportionment. These have not been passed at any regular time, nor have they been based on population strictly. The English reformers have not yet been able to secure for the English Parliament what this section of the Constitution secures for the United States—a uniform basis of representation according to population, and regular times of readjusting the representation as the population changes.

III. A new principle of free government.—A great principle of free government is announced in this clause. Up to this time this principle had not been adopted by any free government. In the Swiss Confederation and the United States of the Netherlands there had been gross inequalities of representation. Inside the several states of this country the attempt at equalizing representation had not been anywhere thoroughly carried out. Now the principle is announced that representation shall be according to population, and that a frequent census shall be made to determine the population, and that representation shall be regularly reapportioned in accordance with the changes of population.

The result of this principle has been that as the new states further and further west have been admitted to the Union, and as they have grown in population more rapidly than the older states, they have gained correspondingly in representation in Congress, till now the political power is held by the states which were a wilderness when this Constitution was adopted.

It required a civil war in Switzerland to accomplish what this clause in our Constitution peacefully secured, equality of representation.

IV. Uncivilized Indians and negro slaves.—But when the Constitution was adopted, two classes were entirely disfranchised: those Indians who had not become civilized, and negro slaves. It was agreed by all that Indians who were civilized should be counted as a part of the representative

population, as they were taxed and subject to the laws of the land. It was also agreed that uncivilized Indians should not be counted, as they neither were taxed nor obeyed the laws, but were subject to their own tribal customs. But the negro slaves made a more difficult problem; they were human beings, and yet they were property. The slave states naturally wished to count their slaves as a part of their representative population, while the free states protested against it. A compromise was finally made upon the basis of counting only three-fifths of the slaves in the basis of representation.

It would have been shorter and plainer to have said, "According to their respective numbers, excluding Indians not taxed, and including only three-fifths of the slaves." But the authors of the Constitution were ashamed to confess the existence of slavery in a free country, and hoped it would soon die out. They therefore avoided the use of the words "slave" or "slavery" throughout the Constitution as they made it. But these words are used in the amendments adopted after the civil war. The words, "those bound to service for a term of years," mean apprentices. As they are not slaves, they are to be counted in full.

Since slavery is abolished, this three-fifths rule is obsolete The former slave states have gained quite a number of representatives in consequence of the abolition of slavery.

In the representative population, the population of the territories and the District of Columbia is not counted because they send no representatives to Congress.

V. The census.—

The apportionment of Representatives is made every ten years upon the basis of the United States census The first census was taken in 1790, and one has been taken every ten years since. Besides the actual number of inhabitants, a great amount of other useful informa-

tion is gathered at each census, and published by the government.

VI. The number of Representatives.—

There are two limitations upon the number of Representatives:

1. Each state must have at least one.

2. There shall not be more than one to every thirty thousand of the representative population.

Congress has from time to time fixed a ratio of representation, generally as soon as possible after each census. There is now a much less number of Representatives than one to every thirty thousand.

If the ratio of representation were still one for every thirty thousand, we should have a House of Representatives containing over two thousand members, a number too large to transact legislative business.

VII. Territorial Delegates.—

Under the Constitution the House of Representatives is composed of members from the states only; but each organized territory has been allowed to send a Delegate, who has no vote, but who can speak on matters affecting the interests of his territory.

VIII. Congressional districts.—

The Constitution says that Representatives shall be chosen by the people of the several states. And it also states how they shall be apportioned among the several

states. The Constitution treats each state as a political unit. Each state is to have so many Representatives, according to its population. But how these Representatives are to be apportioned within each state, was for a long time left entirely to each state legislature to determine.

As a rule, the state legislature divided the states into as many Congressional districts as each state had Representatives, and the people of each district elected one Representative.

But in some cases, one or more extra Representatives were elected "at large," that is by the people of the whole state.

But under the law as it now stands, each state legislature must every ten years divide the state into Representative districts, as many as the state has Representatives, so that one Representative shall be elected from each district. If after any census a state is entitled to additional Representatives, and the legislature fails to reapportion the state into Congressional districts, then the additional Representatives are elected at large, that is by the whole state.

IX. Gerrymandering.—The "gerrymander" is a political device to so arrange the districts as to give an unfair advantage to one political party. This may be done either by making the districts of unequal population or by making them not of compact and contiguous territory, so that the majorities of the one party shall be massed in one or two districts, leaving all the rest of the districts to have moderate majorities for the other party. State legislatures have frequently

unfairly "gerrymandered" their states, both for Congressional apportionment and for the legislative apportionment.

X. The growth of the United States.—The growth of the United States in population and wealth has been one of unexampled rapidity, as the following table will show:

Census of	*Population.*	*Ratio of Representation.*	*No. of Representatives.*
1790	3,929,214	33,000	105
1800	5,308,483	33,000	141
1810	7,239,881	35,000	181
1820	9,633,882	40,000	212
1830	12,866,020	47,700	240
1840	17,069,453	70,680	223
1850	23,191,876	93,420	237
1860	31,443,321	127,381	243
1870	38,558,371	131,425	293
1880	50,155,783	151,912	325
1890	62,622,250	173,901	356

The population given is that of the whole United States, not merely the representative population.

The ratio of representation and the number of representatives is that based on the census named. But the House elected under any ratio of representation does not actually begin until three years after the census is taken. Thus the population tables of the census of 1890 were not reported to Congress till 1891. The apportionment was made, and an election was held under it in November, 1892, and the Congress then elected began March 4, 1893. If this Congress had not been called in special session in August, it would have been December, 1893, the time of the first regular session, when the first Congress elected under the census of 1890 met.

XI. Taxation on same basis as Representation.

The Revolutionary War had just been fought on the cry of "No taxation without representation." The authors of this Constitution were therefore led to place direct taxation on the same basis as representation.

A state could be taxed only because it was represented, and only in such proportion as it was represented.

To still further secure this, it was provided (in section 7 of this article) that all bills for raising revenue must originate in the House of Representatives, the house in which the states are represented according to population.

Clause 4.—Vacancies.

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

I. How made.—

A vacancy may be created by death, by resignation, by expulsion, by accepting an office under the United States, or by the election of an ineligible person.

II. How filled.—

In case of a vacancy, the governor of the state from which the vacancy occurs calls a special election. The power which can originally elect can also fill a vacancy —that is, the people of the district. The person then elected does not serve full two years, but only the unexpired part of the term.

Clause 5.—Sole Powers of the House.

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

I. Speaker of the House.—

The presiding officer of the House of Representatives is called the Speaker, in imitation of the title of the

Speaker of the English House of Commons, so called because he was their spokesman in communicating their wishes to the king.

The Speaker of the House is one of the members of the House, and as such he can vote and speak on all questions. But when he takes part in the debates, he must call some other person to the chair. He appoints all committees, and as legislation is mostly decided in the committee work, he has thus a great influence upon legislation. The real power of the Speaker is thus only second to that of the President. He holds his office at the pleasure of the House, but no instance has occurred of a Speaker being removed. Each new House elects its own Speaker. A Speaker is frequently re-elected.

II. Other officers.—

The other officers of the House are not members of the House, and are appointed and removed at the will of the House. They are a Clerk, Sergeant-at-arms, Doorkeeper, Postmaster, and Chaplain. Besides these there are many persons employed in various positions about the House. These employes are appointed by the Speaker, Clerk, Sergeant-at-arms, Doorkeeper, or Postmaster, according to the nature of their duties.

III. Power of impeachment.—

The House of Representatives has also the power of impeachment, as the Senate has of trying all impeachments. An impeachment trial is a political trial of some officer for a political offense, for the sake of remov-

ing him from office. An impeachment by the House only brings the case before the Senate. A committtee of the House is appointed to conduct the prosecution.

APPENDIX TO SECTION II.

I. Nomination of Representatives.—Any qualified person may be a candidate for Congress, and if he can secure votes enough he can be elected. Independent candidates are occasionally elected without a party nomination. But as a rule a candidate is nominated by a convention of his own political party. This convention is called by the party committee of that Congressional district.

The call states the time and place of the convention, and the number of delegates to which each part of the district is entitled. As a rule these parts are counties, but in a great city they may be wards or precincts. In some cases the apportionment of delegates is according to population, and in some cases according to the number of votes for the party received in each county or ward at the last election. This is generally determined by the number of votes cast for Presidential electors or for governor, as the fairest test of the real vote for the party, uninfluenced by any personal or local considerations. The delegates for each county are elected by a county convention called in a similar way by the county committee of the party. The delegates to the county convention from each town, village or ward of a city are elected by the voters of the party in that local subdivision on the call of the local committee of the party.

There are two methods of doing this. The original method is by a caucus or meeting of the voters. The voters who are present at the appointed time elect a chairman and a secretary, and then elect the delegates to the county convention. Sometimes this is done by ballot, and sometimes by acclama-

tion. The caucus may transact other business, such as electing a committee for the ensuing year, instructing the delegates to vote for some special candidate, or passing resolutions expressing opinions on matters of public policy. The chairman and secretary give the delegates their credentials, that is a written certificate that they were elected as delegates.

In some states it is provided by law that a primary election shall take the place of the caucuses, and in some cases primary elections are called by the party committees, although not required by law. A primary election is managed like any election, except that no one can vote who does not belong to the party which is holding the election, besides being a qualified voter in that precinct. A primary election is intended to give the voters a better opportunity to select delegates, and it is especially convenient where, as in a great city, there are a large number of voters.

The Congressional District Convention meets some weeks, or perhaps months, before the election, at the time and place named by the district committee of the party. The chairman of the committee usually calls the convention to order, and reads the call for the convention that was issued by the committee. A temporary chairman and temporary secretary of the convention are then chosen, generally by acclamation. The usual order is then that motions are made, that the temporary chairman appoint committees on credentials, on permanent organization, and on resolutions. The Committee on Credentials reports as soon as possible the names of delegates who are entitled to seats. It frequently happens that one or more delegates have given proxies to other persons to come in their places. And if some delegates are absent, and no one has a proxy for them, it is generally the rule that the other delegates from the same county or ward cast their votes. They do this by giving some one or more of their number the additional vote or votes. It is not unusual for one person thus to have two or more votes. These facts are either reported by the Committee on Credentials, or motions

are made in convention to authorize the proxy votes, or that the delegates present from such a county be authorized to cast the full vote of their county.

If there are any contested seats, the Committee on Credentials hears arguments on both sides and reports to the convention, which again hears arguments and decides whether one or the other set of delegates are entitled to seats, or whether the vote shall be divided between the two factions. In this way, it sometimes happens that there are half votes cast. The Committee on Permanent Organization then reports names for permanent chairman and permanent secretary, and other officers if any are wanted. Very frequently these are the same persons who have been temporary officers.

Usually names of candidates for the nomination are then presented to the convention in formal speeches. For weeks and months before, this subject has been discussed all over the district. Sometimes it is conceded that a certain person shall have the nomination, and the convention is a mere formality. In such cases, the candidate is often nominated by acclamation. But it very often happens that several parts of the district each have a candidate for the party nomination. In that case the convention may have to take several ballots before any one person receives a majority of all votes cast. Sometimes several days are spent in this way. It is the universal rule that a majority is required to nominate. Sometimes before, but more often after, the nomination has been made the Committee on Resolutions reports a series of resolutions, expressing the political ideas of the party in that district. This report may be, and sometimes is, amended if not satisfactory, but is very generally adopted as read, because there is usually a general agreement among members of the same party. A District Committee is then elected, or appointed by the chairman, and the convention then adjourns.

II. Nominations for other officers.—The process of nominating a candidate for Congress here described is essentially the same as that used by all parties in naming candidates for other offices, as far as the circumstances allow. Thus, county officers are nominated by a county convention, state

officers by a state convention, and city officers by a city convention. Town and village officers are nominated by caucuses of the voters. The great Presidential conventions will be described later on. This system of party machinery has become a part of the political habits of our people. It is enforced by no law, and it is modified from time to time in some of its details, and varies occasionally in different localities and parties. But for over half a century this has been the general method of party government. The Australian ballot laws in many states now legally recognize party nominations.

The following are the principal variations of the system:

1. The mass convention of all persons who desire to attend a county or state convention. With a new party or a small one, this is a convenience, as it is so simple. But when a party grows strong and well organized, it is desirable to have a delegate convention, in order to give an equitable representation to all localities. Otherwise those who live at or near the place of meeting could always control the convention.

2. A written call. This is frequently used in nominating non-partisan candidates for a judgeship or a municipal office. A written call is circulated, and signed by all who wish, requesting the person named to be a candidate. Under the Australian ballot law, now adopted in many states, no names of candidates are placed on the official ballot except those named by party conventions or those who have a certain number of names signed to a call. Under these laws all new or very small parties must have such calls signed for their candidates.

III. Party organization.—The organization of each of the greater political parties follows the lines of the governmental divisions of the country. Each party has a National Committee, composed of one or more members from each state and territory. The National Committee calls the National Convention, which nominates candidates for President and Vice-President, adopts a platform of principles, and elects a National Committee. The National Convention is the govern-

ing body of the party. The National Committee is the executive of the party, which raises funds, pays the expenses of the campaigns, and does what it can to secure the success of the party. The National Committee frequently advises the State Committees, but has no power over them.

In each state there is a State Committee of each party, composed of members from each of certain subdivisions of the state. Most states have so many counties, and they vary so much in population, that the Congressional districts are often made the basis of membership for the State Committee. A State Convention is called by the State Committee as often as the state officers are to be nominated. The State Convention consists of delegates from local conventions. Usually each county in the state is represented according to its party strength. The call usually reads, "Each county shall be entitled to one delegate for each two hundred [or whatever number is taken as the basis of representation] votes cast for —— for governor at the last election, or major fraction thereof." And the call then gives a list of counties, with the number of delegates to which each is entitled. But in some cases the representation in State Conventions is on the basis of an equal number from each assembly district. The one method gives a representation of each locality according to the total population, and the other method gives a representation according to the number of the party in each locality. There are arguments on both sides, but the tendency is now to represent the numbers of the party rather than the numbers of the total population.

Each county has a County Committee, and a County Convention representing the various divisions of the county, towns, villages, and wards of cities. The County Convention nominates candidates for county offices.

In each town, village or ward of a city the caucus (or primary election) of the voters of the party takes the place of the delegate convention.

SECTION III.—THE SENATE.

Clause 1.—Organization.

The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

I. The Senate represents the states.—

As the House of Representatives represents the *people*, so does the Senate represent the *states*. Under the Confederation the delegates to Congress were sent by the states, and not by the people. But in the Constitutional Convention, when it was decided that a true national government should be organized, it was claimed with justice that the people should be represented, and not the states. But the smaller states refused to part with the power they had. At last the compromise was made that the House should represent the people, and the Senate the states.

This compromise was proposed in the Constitutional Convention by the Connecticut delegation, and it has therefore been called "the Connecticut Compromise." It is very doubtful whether the Constitution could have been adopted without this compromise.

The English House of Lords is a hereditary body, except the bishops, who are appointed for life. The Councils in the colonies were appointed by the governors. Several of the states during the Revolutionary War had already begun to elect both houses of their state legislatures. The state legislatures now in every case consist of two houses, both elected by the people, but the upper house is always smaller in numbers than the lower house, and its members are elected for a longer term.

The various federal governments, which have been formed in imitation of the American Constitution, all have two houses, the lower house elected by the people in proportion to population, and the upper house representing in one form or another the separate states, or provinces, into which the federation is divided. This is the case with the Empire of Germany and the Dominion of Canada, as well as with many republics.

II. Equality of representation.—

Under the Confederation each state had one vote; and if the delegates from any state were equally divided, the state lost its vote. A large state had no more voice in the affairs of the general government than did a small state. As long as these states were each in theory a semi-independent sovereignty, it was fair enough that each should have one vote; just as a large man or a small man, a rich man or a poor man have each one vote. And under this Constitution, as a result of the compromise which left the Senate to represent the states, each state has an equal voice. But instead of giving each state one vote, with as many delegates as it pleases, the same end is attained in a simpler way by giving each state two Senators, and each Senator one vote. Under the present plan, if the two Senators from any state are opposed upon any question, instead of the state losing its vote, it has one vote on each side of that question.

III. How chosen.—

As Senators represent states, they are chosen by the government of the state—that is, by the state legislature. (See section 4.)

This manner of choice also makes the office of Senator more dignified than that of Representative, as each Senator represents a whole state, while most Representatives represent a part of a state only.

When a state legislature wishes the Senators and Representatives from that state to vote in any particular way, it always recognizes the difference between Senators and Representatives. The resolution which is passed in such a case is always to *instruct* the Senators and *request* the Representatives.

IV. Term of office.—

The term of office of a Senator is six years, three times as long as that of a Representative, and half longer than that of President. The object is to raise Senators above the whims and caprices of their constituents, so that they may consult their solid interests, rather than their immediate wishes.

CLAUSE 2.— CLASSIFICATION AND VACANCIES.

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

I. Classification of Senators.—

Senators are so classified that one-third of them go out every other year.

The Senate is thus a permanent body. There are always two-thirds, or nearly two-thirds, of the Senators in office, while the House every two years is dissolved, and must be reorganized.

This is accomplished by the following process:

1. The first Senate, which met in 1789, was divided by lot into three classes, as equal as possible, the first class to serve two years (till 1791), the second class to serve four years (till 1793), and the third class to serve six years (till 1795). Care was taken that the two Senators from the same state should not be put in the same class, so that no state should change both its Senators at the same time.

2. After the first classification, each *class* holds for six years, and Senators come in and go out with the class to which they are elected.

3. But whenever a new state is admitted to the Union, the two new Senators are assigned to the next classes in order, so as to keep the classes as nearly equal as possible. But the two Senators determine by lot between themselves which has the longer and which the shorter term, and the length of term of the new Senators will depend on the length of time before the classes go out to which they are assigned.

II. Vacancies.—

A vacancy in the Senate may occur for the same reasons as a vacancy in the House. A vacancy in the Senate is filled by the state government of the state which the Senator represented—by the legislature, if in session, or by the governor, if the legislature is not in session. When the governor appoints, the Senator then appointed only holds until the legislature can elect. But when the legislature elects, it is for the unexpired portion of the term.

Thus it often happens that a vacancy occurs in the Senate which is filled, first, by appointment by the governor for a few months, and then by election by the legislature for the rest of the unexpired term. But if the vacancy occurs when the legislature is in session, the governor cannot appoint a Senator, but the whole matter is in the hands of the legislature.

Clause 3.— Qualifications of Senator.

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

The qualifications for Senators.—

These are placed a little higher than for Representatives. They are:

1. Age—thirty years.
2. Citizenship of the United States—nine years.
3. Inhabitancy of the state from which elected.

The disputed questions about Representatives apply also to Senators. (See page 55.)

Clause 4.— The President of the Senate.

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

The Vice-President is President of the Senate.—

In order to give the Vice-President of the United States something to do, he was made President of the Senate. As he is not a member of that body, he has no vote, and no right to discuss questions. But when the Senate is equally divided, he has a casting vote.

It is often erroneously supposed that the President *pro tem.* of the Senate or the Speaker of the House has a casting vote. This is not true. Each of these presiding officers has one vote as a member of the body over which he presides, but no casting vote. If in such a case the vote is a tie, it is lost, as it requires a majority to carry a vote, and a tie lacks one vote of a majority.

The Vice-President can appoint no committees in the Senate, because he is not elected by the Senate, and does not represent them as the Speaker does the House. The Senate elects its own committees.

The Vice-President of the United States, when acting as President of the Senate, is simply a presiding officer. He puts motions, preserves order, and decides questions of order, subject to an appeal to the Senate, but cannot debate or vote (except the casting vote).

He has substantially the same powers as the English Chancellor has when presiding in the House of Lords.

Clause 5.— Other Officers.

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

I. Other officers of the Senate.—

The other officers of the Senate are the same as in the House, and are appointed and removed by the Senate at pleasure. But in the absence of the Vice-President, or when he acts as President, the Senators elect one of their own number as President *pro tempore*, that is temporary President. The custom of the Senate now is to elect a President *pro tempore* the first day of each session, who presides whenever the Vice-President is absent. Whenever the office of Vice-President of the United States becomes vacant by death, resignation, re-

moval, or promotion to the office of President, the President *pro tempore* becomes President of the Senate; but he is not Vice-President of the United States, though often erroneously called so.

The President of the Senate *pro tempore*, when acting in place of the Vice-President of the United States as President of the Senate, has the same duties as presiding officer, but he has not the privilege of the casting vote, and has the privilege of his own vote as Senator on all questions. He has also the privilege of speaking on any question, by calling some other Senator to the chair.

II. Committees.—The committees of the Senate are elected by the Senate itself, according to certain customs by which a Senator is promoted on these committees according to his length of service. But the majority party claims the majority of each committee and the chairmanship of the more important committees.

In the House of Representatives the Speaker has the absolute power to name all the committees. But the custom is that he shall appoint the chairman and a majority of each committee from his own party, which is necessarily the majority party in the House, as it elected him Speaker, and the minority of each committee from the minority party. It is also the custom that he shall appoint to the chairmanship of committees and to the membership of the most important committees only those Representatives who have been in Congress several terms and who have shown marked ability.

All bills are referred to the appropriate committees, and citizens interested in them may be heard before the committees. Most of the real work of legislation is done in the committees.

CLAUSES 6 AND 7.—IMPEACHMENT.

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

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

I. The High Court of Impeachment.—

As the House of Representatives alone impeaches, the Senate alone tries all cases of impeachment. In an impeachment trial the Senate sits as a High Court of Impeachment, and acts in a judicial capacity. Senators are therefore in such a case put upon oath or affirmation to try the case justly. A majority of two-thirds is needed to convict. When the President of the United States is tried, the Vice-President or the President *pro tempore* of the Senate might be interested to have him convicted, in order to succeed to the place of President. It is therefore provided that when the President of the United States is tried, the Chief Justice shall preside.

II. Judgment in cases of impeachment.—

As an impeachment trial is a political and not a criminal trial, the punishment is a political, not a criminal one. Conviction on impeachment carries with it removal from office; and the officer convicted may also be declared disqualified from ever holding a United States office again.

If the offense is a criminal one as well as a political one, the political trial will not prevent a criminal trial also.

See also I, 2, 5, and II, 4.

SECTION IV.—ELECTIONS AND SESSIONS OF CONGRESS.

Clause 1.—Elections to Congress.

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.

I. The constitutional provisions.—

The Constitution provides in relation to election of Senators and Representatives:

1. That each state may prescribe the time and place and manner of holding elections for Senators and Representatives;

2. But that Congress may assume control over a part or all of the subject, at any time;

3. But Congress is forbidden to prescribe the place of choosing Senators. As these are chosen by the state legislatures, it was thought best to forbid Congress to prescribe where the election shall be held, for fear that Congress might prescribe that Senators should be chosen at some other place than the state capitol, or even outside of the state altogether.

II. Provisions made by Congress.—For a long time Congress left this whole matter to the several states, and the greatest variety prevailed. A part of the states elected Representatives in the spring, a part in October, and a part in November. A part of the states elected by ballot, and a part by *viva voce* vote.

But Congress has now by law prescribed certain things in relation to the time and manner of these elections, leaving other questions still open. The elections of United States Senators have been fully provided for by act of Congress; the regulations respecting the election of Representatives are not so minute. Both are given below.

III. Election of Senators.—Senators are chosen as follows:

The last session of a legislature before the term of a Senator from that state expires is the time; and the day is the second Tuesday after the legislature has met and organized; the place, of course, is the capitol of the state, except when in time of public danger the legislature meets at some other place. Each house first votes separately by a *viva voce* vote. Next day a joint convention of both houses is held, when the result in each house is read. If the same person has a majority of all the votes in each house, he is declared elected. But if no one has such a majority of each house of the legislature, the members of both houses in joint convention immediately proceed to vote for Senator. They must meet in joint convention and vote at least once each day until a Senator is elected. All votes must be *viva voce*; that is, as the roll is called each member of the legislature must rise in his place and name the person he votes for. A majority of all the votes cast is required to elect.

In case of a vacancy, the legislature proceeds to fill the vacancy in the same way, on the second Tuesday of the session after the vacancy occurs; or if the legislature is in session when the vacancy occurs, on the second Tuesday after it is notified of the vacancy.

IV. Election of Representatives.—Representatives must be elected from districts of contiguous territory on the Tuesday after the first Monday of November in each even-numbered year. All votes must be by ballot.

In a few states which found it difficult to change their state constitution, Congress suspended the operation of this law, but as soon as possible all the states must arrange to hold their election for Representatives on the Tuesday after the first Monday of November.

Clause 2.—Sessions of Congress.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

I. When Congress meets.—

Congress must meet at least once each year. As a Congress lasts two years, each Congress has at least two sessions, and may have more.

The regular sessions of Congress begin on the first Monday of December each year. The first regular session of Congress lasts until the adjournment some time in the next summer, and is called the *long session.* The second regular session lasts until the fourth of March, at noon, when the terms of office of all the Representatives and of one-third the Senators expire. This is therefore called the *short session.*

A special session may be called by the President for extraordinary reasons. (II, 3.)

A session of Congress may be ended in one of three ways:

1. The two houses may agree to adjourn.

2. The term for which all the Representatives and one-third of the Senators were elected may expire. This happens every odd year on the fourth of March.

3. In case the two houses disagree in respect to the time of adjournment, the President can adjourn them. This case has never occurred, but it is provided for in the Constitution. (II, 3.)

II. Where Congress meets.—

The Constitution does not fix the place where Congress shall meet. But the place now provided is the capitol at Washington. But when, in case of invasion or contagious disease, it would be unsafe for Congress to meet at Washington, the President is authorized by law to convoke Congress at some other place. Or Congress, when in session, has the right to adjourn to meet at some other place, if it so chooses. But since the seat of government was established at Washington Congress has always met there.

The Continental Congress met in the following places: Philadelphia, 1774-76; Baltimore, 1776; Philadelphia, 1777; Lancaster and York, 1777; Philadelphia, 1778-83; Princeton, 1783; Annapolis, 1783; Trenton, 1784; New York, 1785-89. The Constitutional Convention was held at Philadelphia in 1787; this Constitution was ratified in 1788, and went into effect in 1789. The seat of government since then has been: New York, 1789-1790; Philadelphia, 1790-1800; Washington, 1800 to the present time.

III. Name of each Congress.—It is usual to refer to the successive Congresses by their number. Thus the Congress which existed from 1789 to 1791 is called the First Congress, and the Congress which existed from 1897 to 1899 is called the Fifty-fifth Congress.

IV. The Halls of Congress.—In one wing of the capitol at Washington is the Senate Chamber, and in the other wing is the House of Representatives. Each room is fitted up with

a desk for each member, an elevated seat for the presiding officer, desks for the clerks, and galleries for spectators and reporters. There are also a large number of committee rooms in the capitol.

There are some very material differences between the rooms in which the English Parliament meets and those in which the American Congress meets. In Congress each member has a desk at which he can write letters or do other work while the business is going on. There is no such arrangement in Parliament. The consequence is that members of Parliament have nothing to do but to attend to the debates and votes; but also that most of them do not attend regularly. Much business is done in Parliament with a very small number of members present, which would not be a quorum with us. And when it is necessary to have a full attendance because there is to be a close vote on some important question, the "whips" of the different parties are obliged to notify all their supporters to be present. When there is a full attendance of the House of Commons, there is scarcely standing room enough in the hall for the members. The galleries of the two houses of Parliament are quite small, and it is not easy for a visitor to get an opportunity of seeing Parliament in session. The galleries of each house of Congress are very large, and, except on special occasions, visitors can always see and hear a session of Congress without any difficulty.

The reasons for these differences are that the American Congress is governed by the democratic ideas, that every citizen has a right to know what his representatives are doing, and that these representatives should be paid for their time, and should be expected to give their time to the service of the nation; while the English Parliament is still governed by the aristocratic ideas, that only the select few should have the privilege of seeing Parliament in session, and that its members should be wealthy men who serve without a salary, and who consequently attend to public business when it suits them.

V. The organization of Congress.—On the 4th of March, at noon, every odd year, one Congress closes its existence and a new Congress begins. The entire House of Representatives goes out of office, those members who have been reëlected as well as those who are elected for the first time. One-third of the Senate also goes out of office.

As the Senate is a permanent body, it does not need to reorganize when it meets. The Vice-President takes his place as President of the Senate, or, if he is absent, a President *pro tempore* is chosen, the new members are sworn in, and the Senate is ready for business. If there are two claimants for a seat, neither is sworn in till the case is decided by the Senate, when the one whom the Senate decides to have been lawfully elected is sworn in.

But when a new House of Representatives meets, the scene is different. The Clerk of the last House makes out the roll of the members who hold certificates of election, who are sworn in, and who then proceed to elect a Speaker. Sometimes this is done at once; but sometimes, when parties are closely balanced, it takes weeks, and even months, to elect a Speaker. Until that is done, the House can do no other business, and has no legal organization. But as soon as a Speaker and other officers are elected, the House is organized and ready for business.

In case there are two claimants for a seat, the Clerk puts upon the roll the name of the one who has a certificate of election from the proper state authorities, who therefore votes in the election of officers. But it often happens that when the contest for the seat is decided by the House, the sitting member is ousted and his opponent is seated. It is usual to vote a salary and expenses of contest to both claimants. Thus it is sometimes a good thing to be a defeated candidate for Congress.

Although the new Congress begins March 4, and the members draw their salaries from that date, the actual organization cannot take place till the first Monday in December, un-

less the President should call Congress together in special session.

When a new President takes office, it is usual for him to call a special session of the Senate alone to act on nominations to the Cabinet and other important offices.

SECTION V.—POWERS OF EACH HOUSE SEPARATELY.

Clause 1.—Elections and Quorums.

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties, as each house may provide.

I. Each house the judge of elections, returns, and qualifications.—

In Parliament and in the state legislatures when this Constitution was adopted, each house was the judge of the elections, returns and qualifications of its own members. Consequently the same power was given to each house of Congress.

When it is said that each house shall be a judge of the elections and returns of its members, it is meant that each house has the power to decide whether a member was lawfully elected or not, or of two persons both claiming to be elected, to decide which one is justly entitled to the seat.

When it is said that each house shall be a judge of the qualifications of its members, it is meant that each

house has the power to decide whether any particular member has the qualifications required under the Constitution. (See sections 2 and 3.)

Taken together, these powers give each house of Congress power to decide who are its members and who are not. The decision of each house is final, and cannot be reviewed by the other house or by the courts.

II. The process of deciding contested elections.—After each election for Representative, the proper officers in each state canvass the votes actually cast and decide which of the candidates are elected. A certificate of election is then given by the Governor or Secretary of State to the candidate who has the largest number of votes as decided by the canvassing officers.

Should the defeated candidate claim that he was rightfully elected, and was cheated out of it by some fraud or mistake in the election or in counting the returns of the election, he can appeal to the House of Representatives, who will decide his case upon the merits. But meanwhile the person who has the certificate of election takes the seat, and votes.

The process of contesting an election is now specified by law. Within thirty days after the result of the election has been declared, the defeated candidate must give notice to the successful candidate that he will contest his election, and specify the grounds upon which he will contest it. Within thirty days after that the successful candidate must reply, stating the grounds upon which he relies to support his case. The case then goes before some judge, who takes all the testimony brought by both sides and their written statements, and forwards them to the clerk of the House of Representatives.

As soon as the House is organized, the Speaker appoints, with other committees, a Committee on Elections. All contested cases are referred to this committee, who examine the

evidence sent them and hear the arguments of lawyers on each side, and then report to the House which of the two claimants is entitled to the seat.

The House then votes on the report, and decides which candidate was lawfully elected. In deciding this question, the Committee on Elections and the House go back of the returns, and decide on the evidence presented whether any illegal votes were cast, whether any mistakes were made in making out the returns, and so on, and then aim to decide according to the real wish of the people of the district without regard to legal technicalities.

The process of deciding a contested election in the Senate is simpler. The question goes directly to the Committee on Elections, and by them is reported to the Senate, who decide as in the House of Representatives.

But the power to decide contested election cases has proved a dangerous power in the hands of a partisan majority. Whichever party has the majority is very apt to decide contested elections in favor of its own side, rather than in favor of justice.

When the question is one of qualification, it goes to the Committee on Elections and then to the House. But in such a case there is no contest; for to prove a member-elect to be disqualified does not seat his opponent, but only creates a vacancy, to be filled in the regular way.

It follows from this that a state may be recognized by one house and not by the other. But the two houses have always tried to work in harmony on this question.

III. What is a quorum? —

A quorum is a sufficient number to do business legally.

In a large body, like either house of Congress, it is plain that it would not do to require all the members to be present before any business can be done. It would be very difficult to have all attend any one day. And

yet it would not be fair for a few members to do business in the absence of the rest, whose votes would perhaps have decided the business in a different way. Some number must be fixed as a quorum.

The Constitution fixes that number at a majority.

But when the House of Representatives is called on to choose a President, a quorum for that purpose consists of a member or members from two-thirds of the states. (Am. XII.)

IV. Powers of a less number.—

But it often happens that a majority are not present to do business; and it has sometimes happened that a number of members absent themselves purposely to prevent business being done.

Two powers are therefore given to a less number than a quorum:

1. They may adjourn till the next day, and so on day after day, till a quorum is present.

2. Or they may compel the attendance of absent members, in accordance with the rules already fixed by the House.

Under the rules of the House of Representatives, no member has a right to stay away from a session of the House unless he is excused or is sick. Absentees who are not excused or sick can be arrested by special messenger and brought into the House. By the rules, fifteen members, including the Speaker, can compel the attendance of absent members.

If a member is absent on an important vote, his party will lose his vote. In order to obviate this evil, there is an understanding among the members of both parties, that if a

member must be absent, he can agree with some member of the other party to *pair* with him. The member who is absent cannot vote, and the member who is paired with him is allowed by the courtesy of the House not to vote. The result is the same as if both were present and voted on opposite sides.

CLAUSE 2.— EACH HOUSE HAS POWER TO MAKE ITS OWN RULES.

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.

I. Rules of each house.—

The rules adopted are the general code of parliamentary practice, with some special changes and additions to suit the circumstances of each house. The rules of parliamentary practice, as they are called, grew up in the growth of the English Parliament, and have now been adopted with slight changes by all deliberative bodies where the English language is spoken. Under this section, either the Senate or House of Representatives can alter any of these rules or make new ones for itself whenever it chooses. And the rules of the two houses need not be the same. Each house makes its own rules. Of course the rules must be subject to the Constitution. Thus, a rule making a greater or less number than a majority a quorum would be unconstitutional.

II. Power to punish its own members.—

Rules would be of no use unless there were some power to enforce them and to punish for disobedience.

Therefore, each house has the right, not only to make the rules for its own proceedings, but to punish those who violate those rules. The offenses which may be punished are not exactly defined, nor are the kind of punishments; but the punishments for members are usually reprimand or fine, and in extreme cases expulsion. For expulsion, a two-thirds vote is needed. A large discretion is thus given to either house, which might be abused, but is not likely to be.

The power over members is not limited to offenses committed by members in their capacity as members, or during the session of Congress, but a member may be punished for any disorderly or unparliamentary action, or for any conduct which renders him unfit to be a member.

As Senators or Representatives cannot be impeached or removed in any other way or by any other power, this power of expulsion is the only safeguard against unworthy members.

III. Power to punish persons not members.—Besides this power over its own members, each house has the power to punish other persons for a breach of its privileges, for disorderly conduct, or for contempt. No such power is expressly given by the Constitution, but it is a principle of the common law, that the power to preserve order and to punish for contempt belongs to courts of law and to legislative bodies. The power of either house to punish for contempt or disorderly behavior is limited to reprimand, fine, or imprisonment,

and to the session of Congress at which the offense is committed.

IV. Some disputed questions.—1. *Can a member be punished for an offense committed before he became a member*? Probably not; the decisions have thus far been to that effect. And the House of Representatives has gone so far as to decide that it could not even punish a member for corrupt conduct in a previous term. But these decisions do not legally bind future houses, and a flagrant case may arise sometime which will lead to an opposite decision.

2. *Can either house imprison a person not a member*? Yes; but only during the session. When the session of Congress closes, the prisoner must be released. The imprisonment in such cases is usually in one of the committee rooms, under guard of the sergeant-at-arms or one of his subordinates.

Clause 3.—Publicity.

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.

I. The value of publicity.—

In a popular government like ours, the people ought to be able to know what their representatives are doing. This is a good to the legislators, and a justice to the people. The members of Congress need publicity, to check them in corrupt or unwise conduct, by the condemnation of the people. They also need it to secure public applause for any ability they may show in advocating or carrying through wise measures. The people need publicity in the proceedings of Congress, so that they may know whether their representatives are worthy of re-

election, and they also need to read the discussions and votes in Congress for their own education in political questions.

II. How publicity is secured.—

Publicity of the proceedings in Congress is secured by the Constitution in two ways:

1. By keeping and publishing a journal of their proceedings.

2. By recording the vote of each member, when one-fifth of those present call for it.

Besides these ways, publicity is effectually secured in three other ways:

1. Spectators are admitted to the proceedings. Galleries are built expressly for the public, and certain distinguished persons are admitted to the floor of each house.

2. The reporters of newspapers are admitted, and are furnished every facility for reporting the proceedings in full. By the aid of the telegraph, the proceedings of each day in Congress are now printed the next morning in all the leading newspapers, which in the course of that day reach almost every village in the land. These reports are often fuller and more correct than the official report. Hundreds of thousands of voters read them with the closest interest.

3. Members are in the habit of having their speeches printed and sent to everybody who is likely to take an interest in them.

III. Publishing the journal.—

The journal of the proceedings of each house is kept by clerks, and is printed and laid on the desk of each officer and member of each house the next morning. It is published in volumes in the Congressional Globe.

Those parts which require secrecy are not published. The House of Representatives usually has no secret sessions, and the Senate only when it does business which it shares with the President, hence called *executive business.* Such sessions are called *executive sessions.*

Executive business is of two kinds: the confirmation or rejection of appointments to office, and the confirmation or rejection of treaties. It is obvious that secrecy is proper in both of these cases. When the Senate goes into executive session, all persons are shut out except the Vice-President, the Senators, and a few trusty officers, who are sworn to secrecy. Yet the reporters for the press generally manage to find out and publish what was done in executive sessions, in spite of all these precautions.

IV. Methods of voting in Congress.—There are three ways of voting in Congress.

1. By acclamation. The presiding officer puts the question, and all who are in favor of it say "aye;" then, after a pause, all who are opposed say "no." If they are nearly all one way or the other, it is easy to decide, and time is saved.

2. If the vote by acclamation is nearly balanced, the presiding officer either says he cannot decide, or some one calls for a division of the house, when a rising vote is taken, and the members are counted. If this is not satisfactory, a call may be made for tellers. The presiding officer then appoints two tellers, who take their position in front of the speaker, and the members, first those in the affirmative, then those in the negative, pass between the tellers and are counted by them.

This is the usual method of voting in the British Parliament, but is not often used in Congress.

3. But in important questions, where a record of each member's vote is wished, the ayes and noes (or yeas and nays) are called for. The method of calling for them is thus: Some member addresses the chair, and says, "I call for the ayes and noes." The chair then says, "Is the call sustained?" All those rise who are in favor of the call, and if these are one-

fifth of all present the call is sustained; the roll is then called, and each member's vote is recorded.

V. The object of calling the yeas and nays.—The object of calling the yeas and nays is to make an official record of each member's vote, so that his constituents and the country generally may know how he voted. When such record is made, members are apt to be more careful how they vote. At least one-fifth of those present must call for the yeas and nays, because to call the roll of members takes a long time, and if one or two members could compel such a call, business would be constantly delayed. But on the other hand, if it required a majority vote to record the yeas and nays, a majority could easily refuse to record their votes, and thus rush through all sorts of measures without any check. As it is, one-fifth of the members can always compel a call of the yeas and nays, and thus make each member give his vote in such a way that the responsibility for it can be proved upon him.

As it is, this power of calling for the yeas and nays is often used by the minority to stave off a measure which they cannot prevent by a direct vote. Thus, when a bill is before the house whose passage the minority are anxious to hinder as long as they can, they will make what are called "dilatory motions;" that is, they will move to adjourn, to lay the bill on the table, to refer it to one of the standing committees, to refer it to a special committee, or to amend it in various ways; and on all these motions will call for the yeas and nays, besides having the right to make speeches on most of them. By these expedients the passage of any bill may be delayed for several days.

Dilatory motions are cut off by the "previous question," which stops debates and dilatory motions and compels the main question to be put at once. This is often used in the House of Representatives. The Senate rules do not provide for the previous question, and the custom there is for each Senator who wishes to do so to speak at length on every question.

CLAUSE 4.— ADJOURNMENT.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournment.—

If either house could adjourn to any time or place without the consent of the other, it might cause a great deal of trouble and inconvenience.

The two houses must be in session at the same time and place. Only one exception is allowed by the Constitution.

Either house may adjourn for three days or less without asking the consent of the other. This is to allow for Sundays and holidays, and other special occasions.

In case the two houses cannot agree upon the time of adjournment, the President has the power to adjourn them to any time he may think proper. (II, 3.) This power has never been exercised.

SECTION VI.— POWERS OF MEMBERS.

CLAUSE 1.— PRIVILEGES OF MEMBERS.

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

I. Salary paid by the United States.—

In England members of Parliament are not paid; the tendency of which practice is to favor the aristocracy,

who can afford to go to Parliament without salary. Under the Confederation, the delegates were paid by the states that sent them, as they were merely delegates, subject to recall at any time. Members of Congress are paid for their services, so that poor men can afford to go to Congress; and they are paid by the United States, so that their pay shall be equal, and that they may be independent of dictation by their state legislatures. Besides, they act for the whole United States, and not for their own state only, and therefore it is fair that they be paid by the United States.

The pay of Senators and Representatives was originally six dollars a day for each day's service, and six dollars for every twenty miles of travel to and from the seat of government. It is now fixed at $5,000 a year, and twenty cents a mile for traveling expenses, *i. e.*, ten cents each way. The Speaker of the House receives $8,000 a year, and the President *pro tempore* of the Senate the same when he acts as President of the Senate.

Congress fixes the salaries of its own members. Several times a Congress has raised the salaries of its members, not only for the rest of its term, but has made the increase apply back to the beginning of its term.

There is nothing in the Constitution to prevent this, although it is evidently unjust. An amendment was proposed in 1789 which, if it had been adopted, would have prevented these "back-salary grabs."

Members of both houses now have each a clerk, paid for by the government, and some other perquisites.

The expenses of living in good style in Washington are great. Wealthy Congressmen have paid their whole salaries for house rent alone, and there are many calls upon Congressmen for money, so that few save very much out of their salaries.

II. Privilege from arrest.—

The privilege of members of Congress from arrest is common to all legislative bodies, here and in Europe, and for the same reason, that their constituents may not be defrauded of their voices and votes for any frivolous reason. This freedom from arrest does not cover:

1. Arrest on the charge of treason.

2. Arrest on the charge of a felony—that is, any crime which is punishable by death or imprisonment in a penitentiary.

3. Arrest for breach of the peace—that is, any act that disturbs public order, such as assault and battery.

But it does cover:

1. Arrest for any misdemeanor except breach of the peace.

2. Service of any civil process, such as a suit for debt, a subpoena as a witness, or a summons to serve on a jury.

This privilege from arrest covers the time of the session, and the time necesary to go to Washington before the session and to return after it. It is not necessary for a member to be sworn in before enjoying this privilege, otherwise he might be arrested when going to the first session in order to be sworn in, and thus be prevented from taking his seat at the proper time.

III. Freedom of debate.—

The privilege of freedom of speech is given to members of Congress.

This freedom differs from the freedom of speech out-

side of Congress, granted to all citizens by Amendment II, in giving freedom from libel suits, as well as all other freedom of speech.

Members are privileged from arrest for words spoken in debate. For indecent or libelous words spoken in debate they may be punished by their own house, but not by any court of law. As the debates in Congress are always printed, this privilege extends to their official publication. But it does not extend to their publication in any other way. A member is free to speak a libel on the floor of the house to which he belongs, if the house allows it, and is not liable for its official publication. But if he or any one else publishes such a libel in any other form, it is not protected by this privilege.

CLAUSE 2.—RESTRICTIONS ON MEMBERS.

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.

I. Restrictions on members.—

The Constitution places certain restrictions on Senators and Representatives.

1. No Senator or Representative can, during the time for which he is elected, be appointed to a civil office which was created or the salary or fees of which have been increased during that time. This is to prevent a Congressman having a place made for him and resigning to take it.

2. No Senator or Representative can at the same time hold any office under the United States. This is to prevent a double salary and divided service.

II. Shall Cabinet officers sit in Congress?—In England the principal officers of government must always be members of Parliament. They receive no salaries as members of Parliament, but they do receive very liberal salaries as officers, so that a person who can afford to do so can make a fortune in politics by being elected to Parliament and working his way up to office by that means. The essential feature of English parliamentary government is that the leading members of the majority party in Parliament also hold the chief executive offices. The sovereign is thus effectually prevented from actually governing, because he cannot appoint his own officers. The executive and the legislative departments are thus not separated, as with us, but the legislative controls the executive. With us, a separation between the executive and legislative is required by this provision. The executive officers of the United States are appointed by the President, or by some other officer himself appointed by the President. They have a great deal of political influence. If they could be elected to Congress it would be possible for the President to control legislation through them, in the same way as George III at the time of the Revolution was actually controlling the action of Parliament through a body of salaried officers appointed by him, who were also members of Parliament, and by giving offices from time to time as the price of votes.

III. Duties of members.—In addtion to committee work and attendance on the session of his own house, each Senator and Representative is obliged to cordially receive constituents who come to Washington, to keep up a large correspondence with his constituents at home, and to do a great many errands for them. Constituents wish help on pensions and claims of various kinds, wish public documents and seeds, and they ask for all sorts of public information. The most

perplexing work of a Senator or Representative is assisting applicants for office, and determining which one he will help when there are several applicants for the same office. The President and the heads of departments cannot personally know all the applicants for office, and they are compelled to depend very much upon the recommendation of Senators and Representatives of their own party.

SECTION VII.—THE PROCESS OF MAKING LAWS.

Clause 1.—Where Bills May Originate.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

I. Bills which the House of Representatives only can originate.—

Most bills may originate in either the Senate or the House of Representatives; but revenue bills must originate in the House of Representatives.

This provision is taken from the unwritten constitution of England. There the House of Commons alone can originate money bills, and the House of Lords can only accept or reject them, but cannot propose amendments to them. Here the House of Representatives only can originate money bills; but the Senate has the right to propose amendments. The reason for requiring bills for raising taxes to originate in the House of Representatives is because that body represents the people directly, and it is the people who are to pay the taxes.

II. Bills which either house may originate.—

The Senate may, however, originate bills which raise revenue indirectly, so long as their main object is not to

raise revenue. For instance, a law to levy a direct tax or a law to assess duties on certain imported goods must originate in the House of Representatives, but a law the violation of which was to be punished by fines to be paid into the treasury, or a law to regulate the sale of public lands, might originate in either house. Any bill which does not relate to raising revenue may originate in either house.

CLAUSE 2.— HOW BILLS MAY BECOME LAWS.

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

I. The different ways in which a bill may become a law.—

There are three ways in which a bill may become a law:

1. It may pass both houses and be signed by the President.

2. It may pass both houses, be vetoed by the Presi-

dent, and be passed over his veto by a two-thirds majority of each house.

3. It may pass both houses, and the President may fail to sign it within ten days (when these are not at the close of the session).

A bill becomes a law as soon as any one of these conditions is complied with. And it goes into operation as a law at once, unless it is expressly provided in the law that it shall go into operation at some future time.

There are four ways in which a bill may be lost:

1. It may not pass the Senate.

2. It may not pass the House of Representatives.

3. It may be vetoed by the President, and not passed over his veto by Congress.

4. It may be retained by the President within ten days of the end of the session, without either his signature or his veto.

II. The President's veto.—

The power of the President to reject a bill is generally called the *veto* power.

The veto power of the President is derived from the veto power of the English sovereign. A king (or reigning queen) of England has an absolute veto, but the President has a limited veto. The veto of a bill by the king of England is final. The act cannot be reversed by Parliament. But the President has a limited veto. A bill vetoed by him may become a law in spite of his veto, by a two-thirds vote of each House of Congress. But the absolute veto of the English sovereign is rarely used, while the limited veto of the President is frequently used.

III. Passage of a bill over the President's veto.—When the President vetoes a bill, he sends it with his objections to the house in which the bill originated. These objections are to be entered on the journal of the house, so that there may be a permanent record of them in connection with the legislative action upon that bill. If the bill thus vetoed fails of a two-thirds majority in the house to which it is first sent, that is the end of it. But if it passes that house, then it is sent to the other house. If it fails of a two-thirds majority there, that is the end of it. But if the bill receives a two-thirds majority in that house also, it becomes a law in spite of the President's veto. The vote in each house on a vetoed bill must be by ayes and noes, and must be recorded in the journal, to make each member as responsible for his vote as the President is for his veto.

IV. How a bill may become a law without the President's signature or veto.—The time in which the President can consider a bill is limited to ten days, not counting Sundays. Otherwise, the President might embarrass legislation by holding bills indefinitely without signing or vetoing them. If the President fails to sign a bill within ten days (not counting Sundays), the bill becomes a law without his signature.

V. Pocketing a bill.—The President has a veto power which is practically that of an absolute veto, over those bills which are passed within the last ten days of the session. He can refuse either to sign or veto those bills, which kills them. This is called "pocketing" a bill.

When the President "pockets" a bill, Congress can do nothing about it, because it is not in session. But the same bill may be introduced as a new bill at the next session. The larger part of all bills which pass Congress are passed in the closing days of a session; and therefore this power of the President is more important than it may seem at first.

Clause 3.—Joint Resolutions.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

I. They must be submitted to the President.—Those resolutions which are intended to have the effect of laws need also the President's signature, like bills. The mere fact that they are called resolutions instead of bills does not change the method of their going into effect.

But when a resolution is not intended to have the force of law, but only to express the opinion of one or both houses, it does not need the President's signature. This is obvious in the case of a resolution of either house alone.

When both houses together pass a resolution not intended to have the force of law, such a resolution is called a *concurrent resolution*, not a *joint resolution*, and it is not signed by the President.

II. Congressional action which need not be submitted to the President.—Any action of one house alone, or both houses together, which does not have the effect of law, does not need to be submitted to the President. The following proceedings do not need the President's signature, or a legal substitute for it:

I. *Any action of one house separately*; such as—

1. Anything affecting the *organization* of either house. These concern only that house, and are therefore determined by it alone.

(*a*) Thus each house is judge of the elections, qualifications and returns of its own members. (Art. I, Sec. 5, Clause 1.)

No other power can interfere with this right. Neither the President nor the other house nor the courts have anything to do with this question. Each house can pass any orders, resolutions or votes upon any question as to who are lawfully entitled to sit as its members. The decision is final, whether right or wrong, and it can only be reversed by some other action of the same house.

(*b*) Each house can elect its own officers, except that the Vice-President of the United States is President of the Senate. (I, 3, 4.) This right belongs to each house by itself, and no other power can lawfully interfere with it.

2. Any resolution expressing the *opinion* of one house. Any society, political convention or public meeting may express its opinion by resolutions. And either house of Congress has the same right to express its opinions by resolutions. Such a resolution has no legal force, and does not require the assent of the other house or of the President.

3. An impeachment by the House, or the trial of an impeachment by the Senate, or any orders or resolutions relating to them, do not need the President's signature. In this case the two houses are not acting as legislative bodies, but as judicial bodies, the House of Representatives as a public prosecutor, and the Senate as a court. As their actions in this case are not in the nature of laws, they do not need the President's signature.

II. Certain resolutions of both houses, which do not have the effect of laws, do not need the President's signature.

1. A resolution proposing an amendment to the Constitution does not need the President's signature. Such a resolution does not amend the Constitution, but only proposes an amendment. It is the action of the states, through legislatures or conventions, that actually amends the Constitution.

2. A resolution which is in the nature of an agreement between the two houses to do something, does not need the President's signature. Such a concurrent resolution has no binding force, except the honor of the two houses. Each house still can do as it pleases. It is bound by no law. As

such a resolution is not a law, it does not need the President's signature.

3. In brief, it may be said that any action of Congress which is in the nature of a *law* must be submitted to the President for his approval, and any action which is not in the nature of a *law* does not need to be so submitted.

APPENDIX TO PART II.

ORGANIZATION OF THE STATE LEGISLATURES.

[The information called for here is to be found mostly in the state constitution of each state, and if not there, in the statutes. Any copy of the revised statutes will also contain the state constitution. Some care should be taken to consult the session laws passed since the revision of the statutes. The Legislative Manual should contain the State Constitution, and a complete list of the officers and employes under the state government.]

I. State governments like the United States.—The United States Constitution was drawn mostly from the experience of the several state governments. In its turn it has had a very powerful influence upon the later state constitutions.

All the state legislatures consist of two houses. The upper house is usually called the Senate. The lower house is in many states called the House of Representatives. The members of both houses are elected by the voters. But the upper house always has fewer members and they are elected for a longer term.

The earlier state legislatures were annual, but the tendency now is to make them biennial. This means that the members of the lower house are elected every two years, and that only one regular session is held in each two years. The provision is usually made that

when the governor calls a special session, the business is limited to the matters specified in his call.

The officers and committees of the two houses in the state legislatures are very nearly the same as in Congress. The Lieutenant Governor is President of the Senate, and a President *pro tempore* is elected from among the Senators. The Senate elects its own committees. In the lower house the Speaker is elected by the members and appoints the committees. The other officers of each house are nearly the same in name and duties as in Congress.

The powers of each house, and the process of making laws and the privileges of members are nearly the same in the state legislatures as in Congress.

II. Work for the student.—1. What is the name of each House of your state legislature?

2. What is the number of members of each House?

3. What is the term of office of members of the upper House?

4. What is the term of office of members of the lower House?

5. When are the elections held?

6. How are vacancies made, and how filled?

7. What are the qualifications required for voters for members of the lower House?

8. What additional qualifications, if any, are required for voters for members of the upper House?

9. What qualifications are required for members of each House?

10. How are the members elected? By single districts? On a general ticket for the county? Or, by minority representation in large districts?

11. How is the legislative apportionment made, and how often?

12. How often does the legislature meet? Annually? Or biennially?

13. On what day does the legislature meet and where?

14. What are the officers of the upper House, and how chosen?

15. What are the officers of the lower House and how chosen?

16. Are the members of your legislature paid a fixed salary or a *per diem*, and if the latter, is the number of days limited?

17. Is each House judge of the elections and qualifications of its own members?

18. What constitutes a quorum?

19. What powers has each House to discipline members and others?

20. What methods of giving publicity to the proceedings of the legislature are required by the constitution?

21. What are the provisions of your state constitution about adjournment?

22. What exemptions from arrest have members?

23. What security have members for freedom of debate?

24. What restrictions are there upon members?

25. In what points does the process of making laws differ from that in the United States?

III. Direct legislation by the people.—

Distrust of their Representatives is leading up to another step in the evolution of popular government. Direct legislation by the people had not until recently been thought practicable except in small communities like some of the smaller Swiss cantons or a New England town meeting. In these cases the voters assemble and legislate directly, just as the voters of Athens and other ancient Greek democracies did. But until recently it has

not seemed practicable in larger communities like cities, counties or states, much less in the United States.

Recently two devices have been adopted in Switzerland, both in the larger cantons and in the Federal government, which allow of direct legislation by the people by means of the ballot. These are called the Referendum and the Initiative.

IV. The referendum.—

This is a method of referring (hence the name) proposed laws to the people. We have already had the thing itself without the name in the adoption of constitutions or constitutional amendments in states by popular vote after they have been prepared by conventions or by state legislatures. We also have had a similar reference to popular vote in various matters of state and local legislation, such as local taxes, the issue of bonds, undertaking public improvements, licensing saloons, etc.

It is now proposed that all laws be made subject to a referendum, at least whenever called for by a petition of a small number of voters. Several states have recently taken steps in this direction, either to provide a referendum for state laws or for ordinances of cities and other subdivisions of a state.

V. The initiative.—

The initiative is the name given to several proposed methods of giving the people an initiative in legislation. On the request of a small percentage of voters any proposed law on this plan may be submitted to a vote of the

people, either of a municipality or of a state, or of the United States.

VI. Forecast of the future.—

The growing distrust of legislatures and city councils, as shown by the constitutional restrictions imposed upon them, and by the frequent charges that legislatures and city councils have been controlled by the influence of wealthy individuals or corporations, is preparing the people for some method of securing legislation without legislatures.

It is altogether probable that little by little some form of direct legislation will be secured, and that it will be used on questions on which there is great public interest, leaving all ordinary legislation to the legislative bodies as before.

Part III.

Powers of Legislation.

The occasion is so important that no man ought to be silent or reserved. A limited monarchy is one of the best governments in the world. Equal blessings have never yet been derived from any of the republican forms, but though a form the most perfect perhaps in itself be unattainable, we must not despair. Of remedies for the diseases of republics which have flourished for a moment only and then vanished forever, one is the double branch of the legislature, the other the accidental lucky division of this country into distinct states, which some seem desirous to abolish altogether. This division ought to be maintained, and considerable powers to be left with the states. This is the ground of my consolation for the future state of my country. In case of the consolidation of the states into one great republic, we may read its fate in the history of smaller ones. The point of representation in the national legislature of states of different sizes must end in mutual concession. I hope that each state will retain an equal voice at least in one branch of the national legislature.—JOHN DICKINSON, of Delaware, in Constitutional Convention, June 3, 1787.

SECTION VIII.—POWERS OF CONGRESS.

I. Powers of Congress are legislative powers.—Thus far we have treated of the *organization* of Congress. We now consider the *legislation* of Congress. Congress is the law-making power of the government, and any laws which the federal government is authorized to make may be made by Congress. The United States government can only make laws through Congress; and therefore the powers of law-making given in this section are expressly given to Congress, and the restrictions upon legislation by the United States are expressly imposed upon Congress as the legislative department of the government.

The powers of Congress are all legislative powers. Congress has all the legislative power of the federal government, except as limited by the President's veto, and has no powers except legislative powers.

But as the United States government is a government of limited powers, the powers of Congress are limited. Many powers are reserved to the states, and many others are not given either to the state legislatures or to Congress, but are forbidden to both. This fact of the division of power makes the subject of the powers of Congress somewhat difficult and complex.

The Senate, acting alone, has certain executive and judicial powers, and the House of Representatives has the power of impeachment, which is not a legislative

power. But Congress, as a whole, has no powers except for legislation.

II. Powers of Congress cannot all be enumerated.—

The powers of Congress given in the Constitution under that head (Article I, section 8) are not all that are given by the Constitution. Other powers are given in other parts of the Constitution. And besides these, many powers have been assumed from time to time by Congress, as implied powers of legislation. Some additional powers have been given by the amendments. And the great growth of population and territory of the United States, and the changed conditions of modern society under the remarkable mechanical inventions of this century, have all compelled Congress to make laws in many directions which the founders of the republic could not have foreseen.

CLAUSE 1.—TAXATION.

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

I. Power of taxation inherent in government.—

Taxation of some kind is necessary to all government. The labor of government, like all other labor, is expensive, and sometimes is very expensive. In war, especially, the expenses of government become enormous.

All governments exercise the power of taxation as a necessary part of their sovereignty. And if this Consti-

tution had not expressly given this power, it still would have been implied in the fact of a government.

Under the Articles of Confederation the real sovereignty was in the several states, and therefore the power of taxation was left to each state separately. The United States was not a nation, but a confederation of states. Congress under the Confederation was not the legislative department of a national government, but an assembly of delegates from allied governments, to consult together for the common good. They could not tax, but they could ask the states to tax, and the states could tax or not, as they pleased.

But this Constitution made us a nation, with a national government. For that government the power of taxation is necessary, and is given in this clause.

II. The power of taxation resides in the representatives of the people.—

In despotic or aristocratic governments the power of taxation is not in the hands of those who pay taxes. But in republics or limited monarchies the people, or their representatives, have the power of taxation. When those who pay the taxes themselves levy them, taxes are more justly collected and more wisely used. There is no power of the government which the people watch more closely than the power of raising and expending the public funds.

III. The states may also levy taxes.—

The fact that the United States exercises the right of taxation does not preclude the states from also levying taxes, nor does it forbid them authorizing cities, counties, towns, villages and school districts from levying taxes for their own purposes.

IV. Methods of taxation.—

The following analysis gives all the methods of taxation named in the Constitution:

- TAXES
  - DIRECT
    - Property tax.
    - Poll tax.
  - INDIRECT
    - Duties.
    - Imposts.
    - Excises.

Taxes are direct or indirect. *Direct taxes* are those which are paid directly by the taxpayer to the government; *indirect taxes* are those which are paid directly by the merchant or manufacturer on his goods, but which are paid indirectly by those who buy those goods. Indirect taxes are easier for the government to collect, because people do not stop to think how much goes to the government of what they pay for goods.

For this reason the United States government has used indirect taxation almost entirely.

V. Direct taxes.—

The Constitution provides that direct taxes shall be laid upon the states according to their representative population. (See I, 2, 3, and I, 9, 4.) This was one of the compromises between the northern and southern states. The representative population is now, since slavery has been abolished, the same as the actual population of the states excluding uncivilized Indians. Very few direct taxes have been collected by the federal government—but the states raise most of their taxes by direct taxation.

Direct taxes may be upon property or upon persons. Direct taxes upon property are levied by taking a certain per cent. of the assessed valuation of the property taxed. An income tax is a direct tax; but when a direct property tax or income tax is levied by the United States, the per cent. will vary in the ratio of the population to the wealth of the several states. The amount to be raised is apportioned among the states according to their population, but within each state it will be apportioned according to property, or incomes, as the case may be. The effect of this is to tax the property of the newer and poorer states more than that of the older and richer ones. If the government raised many direct taxes, this would be an injustice to be redressed.

A direct tax upon persons is called a poll tax or capitation tax. In that case, each person liable to the tax is called on to pay an equal amount.

VI. Duties.—

A duty is a tax on the importation or exportation of goods. Export duties are probably forbidden by the Constitution. (I, 9, 5.) Duties on imports are (*a*) specific duties or (*b*) ad valorem duties. A *specific* duty is one upon the weight or measure of goods; an *ad valorem* duty is one upon their value.

The rate of duties is called a tariff. A *prohibitory tariff* is one which puts the duties on one or more articles so high that it does not pay to import them. A *protective tariff* is one high enough to make it profitable to manufacture or raise in this country articles thus protected. A *revenue tariff* is one high enough and yet not too high to yield a good revenue to the government. *Free trade* exists where there is no tariff.

The tariff question has been one of the great political questions on which parties have divided; and it is likely to be a prominent political issue for many years to come. No party

wishes free trade, and none wishes a prohibitory tariff. The contest is between a high protective tariff and a revenue tariff. On this question people generally divide according to their real or supposed interests.

The collection of duties is in charge of the Bureau of Customs, which is a part of the Treasury Department. Duties are collected at the *custom houses* located at the various *ports of entry*, by officers called custom house officers.

VII. Internal revenues.—

The word *imposts* is used vaguely in the Constitution for any kind of indirect tax, and is intended to cover any indirect tax that anyone could claim is not covered by the words *duties* and *excises*.

Excises are taxes levied on persons who manufacture, or articles manufactured, in this country. The chief sources of revenue now from excises are the tax on liquors and tobacco and the licenses required for carrying on certain kinds of business.

All these kinds of indirect taxes are called now *internal revenue*. Their collection is in the charge of the Bureau of Internal Revenue, which is a part of the Treasury Department.

VIII. Uniformity of taxation.—

Indirect taxes must be the same throughout the country. It is plain that this is the only fair way of taxation. Direct taxes, as we have seen, are not uniform throughout the country. But the indirect taxes, from which the United States gets most of its revenue, are uniform. The same duties are charged at one port of entry as at another, and the same excises are charged

in one state as another. One of the principal things which led to the adoption of the Constitution was that each state levied duties to suit itself. The provision for uniform duties, and that for free trade within the United States, have been a wonderful help to our commercial prosperity.

IX. The objects of taxation.—

The Constitution limits the power of Congress to tax the people to these three objects: (*a*) to pay the debts of the United States, (*b*) to provide for the common defense, and (*c*) to provide for the general welfare. Congress has no right to tax the people except for these three objects, and only enough to accomplish these objects. The general welfare is a vague expression, which allows a wide margin for the discretion of Congress as to what things are needed for the general welfare. But the public money cannot lawfully be squandered as it is in monarchies for the luxury and pride of a king and his court. It cannot be expended for the sole benefit of one state to the exclusion of the rest. It cannot be used for anything that obviously does not provide for the common defense or for the general welfare.

Clause 2.—The Power to Borrow.

To borrow money on the credit of the United States.

I. The public debt.—

The Constitution expressly gives Congress the power to borrow. No other department of the government can borrow money except as authorized by law so to do.

In time of peace, the regular revenues ought to pay all expenses of the government. But no taxation which the people could afford to pay would be enough to carry on a great war without borrowing money. During the civil war the expenses of the government were over two million dollars a day. A large part of this necessarily had to be borrowed.

II. Classification of the public debt.—The debt of the United States is in three forms: (*a*) bonds; (*b*) treasury notes; (*c*) floating debt.

The greater part of the debt is in bonds. Of these there are two kinds, *registered* bonds and *coupon* bonds. The *registered bonds* are called so because a register of each bond is kept in the United States treasury, with the name and residence of the holder of the bond. It is thus safe against thieves, because no one except the person who owns it can collect it or the interest on it from the government. If the holder of such a bond wishes to sell it, he must give notice to the proper officers at Washington, and have the bond transferred on the books to the person to whom he sells it.

The *coupon bonds* are not thus registered at Washington, and thus are as liable to be stolen as any other property. They are named from the coupons or little slips of paper attached to them, each of which represents the interest on that bond for six months. As these become due, they may be cut off and sold at any broker's office or bank. The government will pay these bonds or coupons, when they are due, to any person who presents them.

Treasury notes, commonly called "greenbacks," are promises to pay money. These circulated from 1862 to 1879 without being redeemed by the government, and consequently at a discount. As they are now redeemed on demand in gold and silver, they are equal in value to money.

The floating debt consists of salaries due, interest accruing, bills of contractors not yet paid, and the like. This debt is

never very large, and is kept paid up as promptly as possible.

A large part of the debt incurred in the civil war has been paid up, and that much faster than the public debt of other nations. Because of this, the credit of the United States is as good as that of any nation in the world, and we are able to borrow money at low rates of interest. By watching the newspapers early in January and July each year, the semi-annual statement of the debt can be found for that date.

Clause 3.—The Power Over Commerce.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

I. Previous history.—Before the Revolution, Great Britain regulated the commerce of the colonies with each other, with the home country, and with the rest of the world. During the war and until this Constitution was adopted, each state regulated its own commerce in its own way. Each state tried to favor its own commerce at the expense of the rest, and the result was that the commerce of all was hampered, and local jealousies were greatly increased. If this power of regulating commerce had not been given to the general government, there can be little doubt that these commercial rivalries would have broken up the Union eventually. It was wise, therefore, to give the power of regulating commerce to Congress.

II. State powers of regulating commerce.—The states have no power over the subject of commerce except—

1. Commerce within the state; or

2. Such duties on commerce as Congress may allow (I, 10, 2 and 3), and these must be uniform in all states (I, 9, 6); or

3. By inspection laws.

The states have no power over commerce within their boundaries, except that which is wholly within their boundaries. For instance, commerce on the Erie canal is wholly within

the state of New York, and the New York legislature, and not Congress is the proper body to deal with it. But the Hudson river is partly in New York and partly in New Jersey, and the two bodies have each jurisdiction on that river. Commerce between New York and Albany on that river is in the jurisdiction of the state of New York. But commerce between New York and Jersey City is under the jurisdiction of the United States.

Inspection laws are intended to prevent frauds in the sale of goods. Inspectors are appointed in many states, who inspect goods offered for sale, and see that they are of the proper weight or measure and of the right quality. These inspectors are generally paid by fees, which, of course, are really the same as duties on the goods inspected. A state might, under the name of inspection fees, impose heavy duties on goods coming from other states or countries. To prevent this, the Constitution (I, 10, 2) provides (*a*) that the net produce of such imposts shall be paid into the United States treasury, and (*b*) that inspection laws shall always be subject to the revision of Congress.

III. Commerce with foreign nations.—

Congress has power to *regulate* commerce with foreign nations. But Congress has not power to *prohibit* commerce for any length of time. One Congress laid an embargo on all foreign commerce, forbidding it as a reprisal for the action of European powers. The measure aroused bitter political feeling, and was repealed in a little over a year. It is not likely that any such embargo will ever be laid on our commerce again. Congress has the right to so regulate foreign commerce as to raise a revenue from it, or to favor our own commerce or manufactures, or to retaliate injuries or reciprocate

benefits derived from the commercial laws of other nations, and the right to regulate commerce has been used in all these ways.

In the practice of the government, the commercial power has been applied to embargoes, non-intercourse, non-importation, coasting trade, fisheries, navigation, seamen, privileges of American and foreign ships, quarantine, pilotage, wrecks, light-houses, buoys, beacons; obstructions in bays, sounds, rivers, and creeks; inroads to the ocean, and many other kindred subjects; and, doubtless, includes salvage, policies of insurance, bills of exchange, and all maritime contracts, and the designation of ports of entry and delivery.—*Farrar's Manual of the Constitution*, p. 328.

There is one way in which foreign commerce may be regulated without an act of Congress. A treaty made by the President and confirmed by the Senate may regulate commerce between the United States and the power with which the treaty is made. Such a treaty annuls any act of Congress in conflict with it, and cannot be repealed by act of Congress. Such commercial treaties are a part of the supreme law of the land, and are superior to any act of Congress. But the House of Representatives persistently objects to this encroachment on its rights, and has usually succeeded in being consulted in some way or other about any such treaty.

IV. Commerce between the states.—

Congress has power to regulate commerce among the several states. In the exercise of this power, Congress has wisely made all commerce within the United States

free. A merchant can travel from state to state without being stopped by vexatious duties at the border of each state. Freight and passengers are carried past state boundaries without hindrance. For all the purposes of commerce this great territory is a unit. The only regulations that have been prescribed are such as are needed for the safety of ships and steamboats.

V. Railroads.—Railroads were not known when the Constitution was adopted, and in their earlier years railroads were short lines, mostly within one or at most two states. But the great railroad systems of the United States have now grown beyond the power of any one state to control, or of all of them, acting separately. Congress has therefore enacted the Inter-State Commerce Act, regulating railroad commerce between the states. Congress has thus assumed control of this subject, and is passing more and more effective laws on it from time to time. The law does not now apply to railroads which are wholly within one state. It is still an undecided question whether Congress can regulate the traffic on such railroads. Probably, however, it is within the power of Congress to do so, from the fact that by their connections with other railroads they form a part of the great railroad systems, which are interstate.

VI. Commerce with the Indian tribes.—

Congress has sole control of commerce with the Indian tribes. These tribes are not foreign nations, nor are they composed of citizens. They are subject peoples, and as such they are under the control of the federal government. Commerce, like all other relations with them, is under the control of the general government. Even if one of these tribes is located within the bound-

aries of a state, the state has nothing to do with it. The United States alone controls all relations with it.

This, of course, does not apply to Indians who have given up tribal relations and are admitted to citizenship. As fast as possible, the Indian tribes are now being civilized and educated and made citizens. The time will soon come when there will be no Indians politically, but only American citizens of Indian descent. When that time comes this clause will be obsolete.

Clause 4.—Naturalization and Bankruptcy.

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

I. Naturalization laws.—

Naturalization is the process by which a foreigner becomes a citizen. The power of naturalization is one of the attributes of sovereignty. As long as the states were held to be sovereign, it was proper that they should have the power of naturalization, as they did under the Articles of Confederation. But when this Constitution was framed to make us one nation, this power of naturalization was taken from the state legislatures and given to Congress. Some practical abuses had arisen from the states requiring different times of residence. A foreigner who thought the time required in one state too long, had only to move to a neighboring state to be naturalized in a much shorter time. It was, therefore, provided that the rule of naturalization should be uniform.

See under Amendment XIV, for a full discussion of naturalization and citizenship.

II. Bankruptcy.—

A bankrupt law is a law under which a person who cannot pay his debts may give up to his creditors voluntarily, or be compelled by them to give up, all his property which is liable for debt, and may then be freed from the rest of his debts. The objects of such a law are to divide the property of a bankrupt fairly among all his creditors as far as it goes, and to give the bankrupt a chance to begin business again free from his old debts.

Congress has power to pass a uniform bankruptcy law. It must be *uniform*; that is, it must apply alike to all parts of the United States. As long as Congress does not exercise this power, the states have the right to pass such laws; but when the United States has a bankrupt law, it supersedes all state laws upon the subject, and this law is executed by United States courts and officers. State laws on this subject are often called insolvency laws.

CLAUSE 5.— COINAGE AND WEIGHTS AND MEASURES.

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

I. The power of coinage.—

The power to coin money is an attribute of sovereignty, and naturally belongs to the United States as a sovereign power. The states have no right to coin money. (I, 10, 1.) Much less have cities, counties or villages, or private individuals or corporations. Only the United States can coin money, and then only by act

of Congress. No officer of the United States can coin money except as authorized to do so by act of Congress.

Money is coined in the United States in the mints of Philadelphia, New Orleans, San Francisco, Carson City, and Denver. The three latter places have been made mints because they are in the gold and silver districts of California, Nevada, and Colorado.

II. Foreign coins.—Congress has regulated the value of foreign coins so far as the rate at which they shall be taken for taxes and duties. But there is now no law attempting to regulate the value of foreign coins in the payment of debts. People may take foreign coins in business dealings, if they choose, but they are not obliged to by law.

III. The standard of weights and measures.—Congress has never exercised its power to fix the standard of weights and measures, but has left the subject to the state legislatures. This standard, however, is, with slight exceptions, the same in all the states, so that we have the advantages of uniformity.

Congress has adopted a standard of weights to be used in the mints in coining money, but has not required this to be used elsewhere.

Congress has also enacted that the metric system of weights and measures shall be lawful but not obligatory. The object of this is to make people familiar with this system, which will probably sometime be adopted by all civilized nations, so as to make all weights and measures throughout the world the same.

Clause 6.—Counterfeiting.

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

Under the power conferred by the Constitution, the United States punishes the counterfeiting of its coins,

bonds, notes, stamps, and other securities. The punishment is by fine and imprisonment in various degrees.

Clause 7.—Post Offices and Post Roads.

To establish post offices and post roads.

I. Value of the post office.—

The post office is the function of the general government which most concerns the daily life of our citizens. Every time we receive or send a letter or postal card or newspaper we touch the machinery of the United States government. We thus have friendly and business intercourse with distant people, and get periodical literature far cheaper and more certainly than we should be able to if the government did not manage the post office, or if each state separately undertook to manage its own post offices.

II. Post roads.—

Congress has authority to *establish* post roads. Generally it has simply *used* roads already established by the states. But it has established some highways and railroads under the authority of this section. The principal highway thus established was the Cumberland road from the Potomac westward; and the principal railroads thus established are the Union Pacific and Central Pacific, together making one line, and the Southern Pacific and the Northern Pacific Railroads. These railroads were not built by the United States directly, but by incorporated companies, which were assisted by the United

States with money and bonds. They were built under the authority and with the assistance of the United States as post roads and military roads.

Clause 8.— Copyrights and Patents.

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.

I. Copyrights.—

A copyright secures to an author the exclusive right to publish and sell his writings.

The progress of science and literature is greatly promoted by giving this privilege to authors. Most people cannot afford to write merely for fame, and unless they can be at least paid for their time, they cannot write much. A copyright law, by giving them the control of their writings, is an encouragement to authors.

The United States copyright law has created an American literature since this Constitution was adopted. A large part of this literature would never have been written if there had been no United States copyright law.

A copyright is given for twenty-eight years, and can be renewed for fourteen years more. It may be sold or inherited, like other property. This book is copyrighted; see the next page after the title page.

II. Patents.—

A patent secures to an inventor the exclusive right to manufacture and sell a new invention. The liberal patent laws of the United States have encouraged very greatly the progress of the useful arts.

The natural ingenuity of the American people has been so stimulated by the rewards of successful inventors, that the United States to-day leads the world in the manufacture of labor-saving machinery. At every's world's fair, American inventions and manufactures take a large share of the prizes in this line. Among the important inventions of Americans, are the telegraph, the steamboat, the cotton gin, the sewing machine, the reaper, the threshing machine, the sleeping-car, the telephone, the phonograph, the typewriter.

Besides these great inventions, thousands of lesser ones, and thousands of improvements upon machines invented elsewhere, help to show the inventiveness of the American mind, and the value of our patent laws.

A *caveat* is given for one year to any inventor who wishes to secure his invention, but who needs time to perfect it before patenting. A *patent* is given only to inventions really new, or to improvements on old inventions. A patent is given for seventeen years, and may be extended for seven years more by the patent office.

Patents may be sold or inherited, like other property. Every article which is patented must have the word "patented," with the date of the patent, affixed to it in some way.

Clause 9.— United States Courts.

To constitute tribunals inferior to the Supreme Court.

United States courts.—

A Supreme Court of the United States is provided for in Article III, section 1. But Congress fixes the number of the judges, their salaries, and their duties, except as provided by the Constitution. Congress also has power to organize inferior courts.

The power to organize these courts implies also the power to determine the powers of each court, within

the limits of the Constitution. This power also Congress has frequently exercised.

This subject is fully treated under Article III.

Clause 10.— International Obligations.

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

I. Crimes at sea.—

Congress has power to define and punish all crimes committed at sea on ships over which the United States has any jurisdiction. Offenses against the law of nations are also under the exclusive jurisdiction of the federal government.

II. Piracy.—Piracy is robbery at sea. By the general consent of Christian nations, a pirate is a common enemy and an outlaw. A pirate is not entitled to the protection of the country of which he is a citizen, but may be taken by the forces of any other nation as well and punished. The universal punishment for piracy is death.

III. Felonies on the high seas.—Crimes are either *felonies* or *misdemeanors*. If the penalty attached to them be death, or imprisonment in a state prison, they are felonies; otherwise they are misdemeanors.

The high seas are those waters of the ocean outside the jurisdiction of any particular state. Generally this extends to low-water mark. This is the line that divides the jurisdiction of the United States from that of those states which border on the ocean. But so far as it concerns other nations, the jurisdiction of the United States extends to three miles from low-water mark, including all bays and gulfs.

As between the different nations of the world, the high seas, that is the ocean beyond three miles from shore, are neutral ground, and free to all to traverse, but not owned by any nation. The jurisdiction of each nation extends (*a*) to

its merchant vessels while on the high seas, but not in foreign ports, and (*b*) to its ships of war everywhere, in port or on the high seas. And felonies committed by American citizens anywhere beyond low-water mark and outside the jurisdiction of another nation, are punishable by United States law and not by state law.

IV. Offenses against the law of nations.—The law of nations, or *international law*, consists of those rules which Christian states acknowledge in their relation with each other.

To secure the observance of these rules by American citizens, laws are necessary. Our government is responsible for its conduct and for the conduct of its citizens towards other nations or their subjects. A single person could involve us in difficulties and perhaps in war with some foreign nations, if we had no laws to secure the observance of the law of nations by our citizens.

Clause 11.—The War Power.

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

I. The power to declare war.—

The power to make war and peace is one of the highest attributes of sovereignty. Even under the Articles of Confederation the general government had the power to make war and peace. The only question that could arise is, whether this power should be legislative or executive. In this Constitution it is divided. The power to declare war is given to Congress, but the power to make treaties, which includes the power to make peace, is given to the President, with the consent of the Senate.

A declaration of war is not necessary for a war. Acts of hostility are enough, and with Indian tribes fighting begins generally without any formal declaration of war.

II. Privateering.—

Privateers are those private armed vessels which are engaged in authorized war. They are distinguished from a regular navy because they are fighting for the sake of plunder and are only controlled by their commissions, while vessels of the regular navy sail under the orders of their own government and are commanded by responsible officers of the government.

Privateers must always have a commission from their own government to show that they are not pirates. The commission is called a "letter of marque and reprisal."

Marque means boundary, and *reprisal* means retaliation. A letter of marque and reprisal is thus a commission to a private vessel to go beyond the boundary of its own nation and seize the vessels of a certain nation in retaliation for wrongs done by that nation.

To issue letters of marque and reprisal is an act of war. It may be done without other acts of war, as in the case of our hostilities against France in 1798, in which letters of marque and reprisal were issued, but war was not regularly entered upon by either side. Or it may be done as a part of a regular war, as was the case in our War of 1812, with England.

The tendency of international law now is to discourage, and if possible abolish, privateering. Several of the leading nations of Europe, at the treaty of Paris in 1856, agreed to abolish privateering, as between each other, and have since induced other powers to unite in that agreement. The United States refused to agree to abolish privateering unless the further step should also be taken, to forbid all seizures of private property at sea except contraband of war. Steps have been taken by several powers looking toward that result; and it will not be many years before the United States, in common with all Christian nations, will bind itself to abolish all privateering, and all seizures of private property at sea.

When that time comes, this clause of the Constitution will become obsolete.

III. Prizes.—Congress can make rules respecting captures on land or sea. This is a necessary incident of the war power. This power, however, is limited by the recognized rules of international law, and by special treaties which we have made with several nations.

When ships are captured at sea, either by men-of-war or by privateers, they are brought into some American port and tried by a United States district court, sitting as a prize court. All questions regarding the lawfulness of the capture and the share of the prize to be paid to each sailor, are also settled by the court according to United States laws. It is usual to divide the proceeds of a captured ship among the officers and men of the men-of-war or privateers which make the capture.

Captures may also be made on land, of certain kinds of property, according to the regular rules of war. In this case the proceeds of the captures go to the United States, and not to the soldiers making the capture. Questions in regard to the lawfulness of these captures will go before a United States court, and be decided according to the laws of the United States and the recognized rules of war.

Clause 12.—The Regular Army.

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

The army.—

War calls for armies. One of the great curses of Europe is the burden of enormous standing armies in every nation. The expense of supporting them is very great, and adds greatly to the taxation. Large numbers of men are withdrawn from active industry at the sacrifice to themselves and to the nation of what they could otherwise earn. And the presence of a large army is a

constant temptation to use it in war, and a constant temptation to ambitious generals or politicians to usurp authority.

From this curse we are freed in this country. The ocean separates us from any foe we need fear. A standing army is only needed to fight the Indian tribes, and to provide trained officers in case of war. We have a small standing army in time of peace. When war comes, we can easily increase our army by volunteering or by conscription, and on the return of peace disband these forces again. This has been the constant policy of our government.

No appropriation can be made by Congress for more than two years. If Congress could make an appropriation for many years in advance, the party temporarily in power might fix a large standing army on the country for many years. As it is, the people can at any time, through their representatives in Congress, reduce the army or abolish it altogether. In practice, Congress makes appropriations for the army from year to year. In England the appropriations for the army, as well as the power to govern the army by military law, are renewed annually by Parliament as a protection against despotism.

Clause 13.— The Navy.

To provide and maintain a navy.

Our navy.—

A navy cannot be raised as easily as an army, and it is necessary to have a considerable navy in order to pro-

tect our commerce in all parts of the world. A navy is of more use in time of peace than an army is, and of less use, generally, in war. It is better, therefore, to keep a regular navy, and not to depend upon a volunteer navy in case of war, as we do upon a volunteer army. For the same reason appropriations for a longer time are not forbidden. They may be necessary in building ships, which take time to construct.

Clause 14.—Army and Navy Regulations.

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

I. Power to make rules for army and navy.—The power to make war, and to organize armies and navies, implies also the power to rule these armies. Congress therefore has the power to make rules for the government of the army and navy. These rules together are called *military law* and *naval law*. These must not be confused with *martial law*. Military law and naval law do not govern civilians, but only soldiers and sailors. Martial law is the government by an army of a part of this or any other country held by our armies, while war is going on. Military law is the government *of* armies; martial law is the government *by* armies.

II. The army and navy regulations.—Congress has made rules for the government of the army and navy, called the Army Regulations and the Navy Regulations. These prescribe the duties of every officer, soldier, or sailor, and provide punishments for every offense. For trifling offenses the officer in command may reprimand or put under arrest with-

out trial. But no such arrest can be longer than ten days. All serious offenses must be tried by court martial. A court martial is organized regularly, and proceeds according to regular rules, giving the accused a fair trial, but one more summary than in a civil court.

Soldiers and sailors can be punished for disobeying orders, as well as for what would be crimes in the case of ordinary citizens. And officers can also be punished for conduct unbecoming a gentleman. Officers have been severely punished for such offenses as refusing to pay their debts, slandering the wife of a brother officer, etc. Punishments may extend even so far as death. The President has power to pardon, or to reduce the punishment to a lighter one. Every officer, soldier and sailor must swear allegiance to the United States, and promise obedience to the rules of the army or navy, as the case may be. Every officer must subscribe to these rules, and every soldier or sailor must have them read to him.

Clause 15.—The Power to Call Out the Militia.

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

I. The militia.—

The militia are citizen soldiers. The regular army is composed of men whose business is to be soldiers, and who do nothing else. The militia are citizens who are liable to be called away from their regular business to serve as soldiers for a short time.

By act of Congress all male citizens, and those who have declared their intention to become citizens, between the ages of eighteen and forty-five, constitute the national forces, and are liable to perform military duty when called out by the President. These constitute the unorganized militia, and are not ready for service till called out, officered, armed, and drilled. The organized militia are those men who have been

formed into companies and regiments by authority of state or United States laws, and are officered, armed, and drilled, and ready to be called out at any time, and are called the National Guard.

II. Calling out the militia.—

The militia may be called out for three things: (*a*) to execute the laws of the United States, (*b*) to suppress insurrections, and (*c*) to repel invasions. Each state may also call out its own militia for similar purposes.

The President alone can call out the militia of the United States, and he may call out any number at his discretion, and from all the states or from some only, as may be most convenient. He calls on the governor of each state for a certain number of militia, and it is then the duty of the governors of the states called on each to call out that number of militia. If the states do not furnish their militia as called for, the government may draft men enough to make up the number.

III. Volunteers.—

At several times the government has accepted the services of volunteer companies or regiments for longer or shorter times. These volunteers are not a part of the regular army, nor are they called out as militia. All our great wars have been fought chiefly by the aid of volunteers; and in most of our Indian wars volunteers have served beside the regular soldiers.

CLAUSE 16.—THE POWER TO ORGANIZE THE MILITIA.

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.

State and United States powers over militia.—

The states may have their own militia, subject to their own laws, and many of them do have such militia. (See Am. II.)

The militia of each state are organized under the laws of that state. But the United States may at any time prescribe regulations for organizing, arming and drilling the militia. But the states carry out these regulations. When the states furnish militia to the United States, they usually do it by regiments, with officers appointed by the state. These regiments are mustered into the United States service, and are then organized into brigades, divisions and army corps by the United States, the President appointing the officers of the brigades, divisions, and army corps.

When volunteers or militia are mustered into the service of the United States, they are subject to the army regulations like the regular soldiers.

CLAUSE 17.—THE POWER OF EXCLUSIVE LEGISLATION.

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 government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

I. The extent of this power.—

Within the boundaries of the states, Congress exercises only a limited power of legislation. It can legislate only on those subjects granted in the Constitution.

Other subjects are either reserved to the states to legislate on or are forbidden to both state and United States governments.

But in certain places the United States can exercise all the authority which it can exercise in the states, and also all the authority which a state can exercise. These places are:

1. The District of Columbia.
2. Forts, magazines, arsenals, dockyards, and soldiers' homes, in which the jurisdiction has been ceded to the United States.
3. Territories. (See IV, 3, 2.)
4. On board United States men-of-war anywhere.
5. On board United States merchant vessels when at sea.
6. In the tide waters of the coast, so far as they are not under the jurisdiction of the several states.

Over these places the United States exercises exclusive jurisdiction, and Congress has therefore the exclusive power of legislation there.

II. The District of Columbia.—The states of Maryland and Virginia ceded to the United States, in 1790, a tract of country just ten miles square (or a hundred square miles in area). This was named the District of Columbia, and in 1800 the seat of government was moved there. In 1846, that part of the District of Columbia lying southwest of the Potomac, which had been given by Virginia, was ceded back to Virginia. The District of Columbia now contains sixty-six square miles.

The city of Washington, in the District of Columbia, is the capital of the United States. There was no city or village at which the capital was located, but the city of Washington was created to be the capital. Its name was given to it to perpetuate the memory of the greatest American, who was "first

in war, first in peace, and first in the hearts of his countrymen." It is not far from his own home, at Mount Vernon, where he is buried.

The District of Columbia can be taxed by Congress, but it is not entitled to representation in Congress, nor can its people vote for Presidential electors. This inequality could only be obviated by ceding the district back to Maryland or erecting it into a separate state. And this ought not to be done, because the United States needs to have absolute control of its capital.

The government of the United States should be supreme at its capital, if anywhere. If the capital of the United States were within any of the states, it would be subject to the mixed jurisdiction of the state and of the United States, and this would lead to endless complications and difficulties.

III. Forts, navy yards, and arsenals.—The United States can also have jurisdiction over the places needed for forts, arsenals, navy yards, soldiers' homes, and other public buildings. But the consent of the legislature of the state in which these buildings are situated must first be obtained.

In giving this consent, state legislatures have generally reserved the right to serve all state processes, civil and criminal, in these places. The object of this is, that these places may not be a sanctuary for criminals, who otherwise could not be arrested by state authority if they escaped into these places.

We must distinguish between the *property* of the United States and the *jurisdiction* of the United States. Forts, arsenals and navy yards are the property of the United States, and are also in its jurisdiction. In the District of Columbia the United States has property only in the public buildings and grounds; but it has jurisdiction over all the district. In the case of public lands unsold within a state, the United States has property, but has no more jurisdiction than any where else in the state. When the United States owns property, it owns it as a private individual does, except that it cannot be taxed by a state.

Clause 18.— Incidental Powers.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

I. Incidental powers.—

The Constitution provides that Congress may make all laws necessary for carrying into execution any power granted by the Constitution to any branch of the government.

This clause gives Congress the power not only to pass such laws as have been expressly named in this section, but any laws which may be necessary and proper for carrying into execution these express powers, and also any laws which may be necessary and proper for carrying into execution any other powers vested by the Constitution in any part of the government.

For instance, the power in Clause 7, to establish post offices and post roads, is a power expressly granted to Congress. But in order to carry this power into execution, it is necessary and proper to protect the mail. Congress has therefore assumed under this clause the additional power to pass laws punishing robbery of the mails, and requiring all persons who handle the mail in any way to be under oath, and requiring postmasters to give bonds. Congress has, also, under this clause created a Post Office Department, with a large number of post offices and postmasters. But in carrying out Article II, Sec. 2, Congress has by law vested the appointment of these officers partly in the President with the consent of the Senate, and partly in the Postmaster General.

II. Why incidental powers are granted.—The powers thus granted to Congress by this clause are incidental or implied powers, not expressly given by any part of the Constitution.

This clause was opposed by a large party led by Patrick Henry, for fear that Congress should find an excuse in it to override the rights of the states, and the Tenth Amendment was passed to quiet them. But experience has shown that the states still retain all the rights that they need, and that the federal government has not grown into a despotism because of this clause.

The framers of the Constitution claimed that this clause only asserted in words what would have been implied in any case. They claimed that it was only common sense that a government should be able to do what it was established on purpose to do. And they claimed that it was a sound rule of law, admitted by all judges, that when a power was granted, liberty to do all that was needed to carry it into effect was also granted. (See Am. X.) Experience has shown that the very political parties which wished to limit the power of Congress and the President have been, when in power, the very ones to do things not expressly granted in the Constitution. They were more sensible in their practice than in their theories. This Constitution creates a real national government, and this government must have national powers. Some of these needful powers can be foreseen, and are named in this section and elsewhere. But it was impossible to see all the emergencies that might arise, and therefore this general power is also given.

The most remarkable act in this line was the purchase of Louisiana by President Jefferson contrary to his own theories of the power of the Constitution, but for the best interest of the nation.

III. What laws Congress may pass.—

Congress has a right to make any laws (1) which are expressly authorized by the Constitution; (2) or which are implied in the express powers given to Congress, and necessary to carry them out; (3) or which are necessary to carry out any powers vested in the United States or

in any United States officer; (4) or which are necessary for the common defense or general welfare. The enacting clause gives the power to the government to provide for the common defense and to promote the general welfare.

But Congress cannot make laws on subjects (1) which are expressly prohibited to Congress; (2) or which are expressly reserved to the states; (3) or which have not been granted to either the states or the national government.

IV. Powers exercised under this clause.—The following powers are some of those which have been exercised by Congress under this clause:

1. The slave trade has been prohibited. The Constitution provides that Congress shall not prohibit it before 1808. (Art. I, Sec. 9.) The necessary implication is that it can after that date.

2. The writ of *habeas corpus* has been suspended in time of war. The Constitution provides that that writ shall not be suspended except in case of rebellion or invasion. (Art. I, Sec. 9.) The necessary implication is that it may be suspended in that case.

3. Congress has erected light-houses, as a power implied in the right to regulate commerce.

4. The United States has acquired territory by purchase and by conquest, and has governed that territory or formed states out of it. No express authority is given in the Constitution for this. When President Jefferson bought Louisiana, he is reported to have said that he stretched the Constitution till it cracked. But he forgot that Congress could do anything necessary for the defense and welfare of the nation. Texas was also annexed, and other great additions to our territory have been made by conquest and purchase under the same power.

5. The United States punishes offenses committed on board ships of war, even in port, and by persons not in the military or naval service. The reason is, that a ship of war is by the law of nations always in the jurisdiction of the nation to which it belongs.

6. All persons in the United States service are exempt from state control while engaged in their duties as officers or employés of the United States. Congress has not even made any law on this subject, but the Supreme Court has decided that this is a necessary incident of the general sovereignty of the United States.

And the following implied powers have been exercised by Congress, but have been opposed as unconstitutional by powerful political parties:

7. National banks have been created.

8. Paper money has been issued by the government as a war measure.

9. International improvements have been made, such as roads and canals, and making rivers navigable.

10. An embargo was laid on all commerce once only.

11. Most of the "reconstruction measures" at the close of the civil war.

Of the great political parties, the Federalists, the Whigs and the Republicans (the present party) have been inclined to give the national government as much power as possible under this clause. And the anti-Federalists and the Republicans (the old party) and the Democrats have been inclined to give it as little power as possible.

V. Additional powers given to Congress in other parts of this Constitution.—In addition to the powers named in this section, many other powers are either expressly given to Congress, or plainly implied in other parts of the Constitution. A list of these powers is given below. These are all legislative powers, and require the action of the President unless otherwise specified.

As these are discussed in their proper places, a brief mention only is here given to each.

A. **Powers relating to Congress.**—1. *The power to apportion Representatives* among the several states according to their population, and to fix the number of Representatives, giving at least one to each state, and not more than one to every thirty thousand population, (I, 2, 3,) and *the power to reduce the representation of a state* for denying the right of suffrage to male citizens over twenty-one, except for crime or treason. (Am. XIV, 2.)

2. *The power to regulate elections for Senators and Representatives*, in regard to the time, place and manner of holding such elections, except as to the place of choosing Senators. (I, 4, 1.)

3. *The power to fix the time of the annual meeting of Congress.* (I, 4, 2.)

4. *The power to adjourn.* This is not done by law, but by a concurrent resolution, and does not require the action of the President. But either house alone may by resolution adjourn for not more than three days at a time. The power to adjourn includes the power to adjourn to some particular time or place. But neither house alone can change the place of sitting.

5. *The power to fix the salary of Senators and Representatives*, together with the salary of all officers and employés of either house. (I, 6, 1.)

B. **Powers relating to the executive.**—1. *The power to fix the day of choosing Presidential electors, and of their choosing President and Vice-President*, (II, 1, 4,) with the limitation that the day shall be uniform throughout the United States.

2. *The power to canvass the votes for the President and Vice-President.* (Am. XII.) This is the power implied in the words, "The votes shall then be counted." Congress has assumed the power under these words to canvass the votes and determine what votes shall be received, and what thrown out. The right of Congress to act as a canvassing board has been disputed; but the practice is now firmly established.

3. *The power to determine what officer shall act as President when there is no President or Vice-President.* (II, 1, 6.) Such officer is an acting President only, and holds only till the

disability of the President or Vice-President is removed, or a President can be elected.

4. *The power to fix the salary of the President*, but not to increase or diminish it during his term of office. (II, 1, 7.)

5. *The power to regulate the civil service of the United States.* (II, 2, 2.) This includes the power to establish or abolish offices, and to fix salaries and duties of officers, and to regulate the manner of appointment of inferior officers.

6. *The power to control the reception of titles and presents by officers of the United States.* (I, 9, 7.) No officer of the United States can accept any title or present from any foreign king or state, except with the consent of Congress.

C. **Powers relating to the courts.**—1. *The power to fix the salaries of judges* of the Supreme Court and of all other United States courts. (III, 1, 1.)

2. *The power to regulate the appellate jurisdiction of the Supreme Court.* (III, 2, 2.) The original jurisdiction of the Supreme Court is fixed in the Constitution. (III, 2, 2.)

3. *The power to regulate the jurisdiction of inferior courts.* A power implied in the power to organize inferior courts. (I, 8, 9; III, 1.)

4. *The power to fix the place of trial for crimes committed outside of any state.* (III, 2, 3.)

5. *The power to declare the punishment for treason*, but under the limitation that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. (III, 3 2.)

6. *The power to forbid jury trials* in lawsuits where twenty dollars or less is involved. (Am. VII.)

D. **Powers relating to the states.**—1. *The power to allow states to levy duties*, but the net produce of such duties shall be paid into the United States treasury, and the state laws on that subject shall be subject to the revision and control of Congress. (I, 10, 2.)

2. *The power to allow or forbid states to keep armies and navies* in time of peace. (I, 10, 2.)

3. *The power to allow or forbid states to make compacts* with other states or with foreign powers. (I, 10, 2.)

4. *The power to allow or forbid states to engage in war.* (I, 10, 2.)

5. *The power to prescribe* the manner of proving the public records of one state in another. This must be by general law. (IV, 1.)

6. *The power to admit new states into the Union*, with the limitation that no new state shall be formed within the boundaries of another state, or by the junction of two states or parts of states, without the consent of the legislatures of the states concerned.

7. *The power to guarantee each state a republican form of government.* (IV, 4.)

8. *The power to propose amendments to the Constitution*, which become parts of the Constitution by ratification of three-fourths of the states. (V.) For this the President's signature is not required.

E. **Legislative powers.**—1. *The power to prohibit the slave trade after 1808.* (I, 9, 1.)

2. *The power to suspend the writ of habeas corpus* when in cases of rebellion or invasion the public safety may require it. (I, 9, 2.)

3. *The power to make all appropriations* of money from the treasury. This implies also the power to investigate all expenditures of money by any department of the government. (I, 9, 6.)

4. *The power to govern the territory of the United States*, and to dispose of the public land and other property belonging to the United States. (IV, 3, 2.)

5. *The power to enforce the provisions of Amendments XIII, XIV, and XV*, by appropriate legislation. (Am. XIII, 2; XIV, 5; XV, 2.)

SECTION IX.—PROHIBITIONS ON NATIONAL LEGISLATION.

Clause 1.—The Slave Trade.

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

The slave trade.—

The United States has the honor of being the first nation to take steps to abolish the African slave trade. When this Constitution was adopted, ten states out of the thirteen had already prohibited the slave trade. But North Carolina, South Carolina and Georgia insisted on some guarantee that their slave trade should not be disturbed. It was finally compromised by this clause, which gave them twenty years in which to import negroes from Africa.

The slave trade *to* foreign countries was prohibited in 1794, and the importation of slaves was prohibited in 1807, to take effect January 1, 1808, the very first day when it was constitutional to do so.

Great Britain abolished the slave trade in 1807, a few days after our act was passed.

The framers of the Constitution were ashamed to use the words "slave" or "slavery," and therefore used the word "persons" instead.

Slavery is now abolished by the Thirteenth Amendment, and of course the slave trade with it is thus prohibited by the Constitution.

Clause 2.— The Writ of 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.

I. Object of the writ.—

The writ of *habeas corpus* is an old English process intended to release any person illegally imprisoned. Any person who is imprisoned without proper warrant or indictment can sue out a writ of *habeas corpus* before any judge or court commissioner. Unless the officer who has him in charge can show a legal warrant or other authority, the prisoner is discharged. The writ of *habeas corpus* is a guarantee of personal liberty against unjust imprisonment by officers.

The words "habeas corpus" are the first two words of the old Latin form of the writ, from which the writ is named.

When the writ of *habeas corpus* is suspended, this safeguard against arbitrary and illegal arrest is laid aside for the time being. To suspend the writ of *habeas corpus*, means to give government officers power to arrest and imprison anyone without a regular warrant or indictment.

The writ can only be suspended when the public safety requires it, in case of rebellion or invasion. Martial law then takes the place, partly or wholly, of civil law. Persons are then arrested, tried and punished by martial law, and no writ of *habeas corpus* can save them.

This is a necessity of war, when the public safety overrides all other considerations.

II. Disputed questions.—1. *Who has power to suspend the writ?* All agree that Congress has the power. But it is claimed by many that no one else has. The question whether the President or other executive officers have the right to suspend the writ, has never been decided by the courts. As a fact, the writ has been suspended several times by commanding generals and by the President.

2. *Where can the writ be suspended?* Only in that part of the country actually involved in the war. During the civil war a man named Mulligan was arrested for treasonable conspiracy in Indiana, tried by a court martial, and condemned to be executed. But the Supreme Court released him on a writ of *habeas corpus*, on the ground that Indiana was not the seat of war, and therefore martial law could not lawfully be proclaimed there. His offense was one to be tried by the civil courts, and liable to a less punishment than that of death.

Clause 3.—Bills of Attainder and Ex Post Facto Laws.

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

I. Bills of attainder.—

A *bill of attainder* is a law inflicting punishment without trial. It was a common practice in England, some centuries ago, for Parliament to pass bills of attainder. They answered all the ends of impeachment and much more. It was usual in such bills to prescribe the punishment of death, confiscation of property, deprivation of all honor and titles, and corruption of blood, so that the descendants could not inherit property through the person attainted.

Such an act was an easy means of revenge upon political opponents, and was generally used for that end. It gave the

accused no regular trial; it punished for acts that were not prohibited by law; it gave the accused little or no means of defense, and it punished his family as well as himself. The power to pass bills of attainder is therefore wisely forbidden (*a*) to Congress, and (*b*) to the state legislatures. (Sec. 10.)

Persons who offend against the law may still be tried in the courts, and political offenses committed by public officers may be tried by impeachment, under careful limitations.

This wise provision of our Constitution has taken the sting out of our political contests.

II. Ex post facto laws.—

An *ex post facto* law is one which punishes not only those who may afterwards break it, but those who have already done anything contrary to it, or one which adds a greater punishment to crimes already committed. This applies only to criminal laws, and not to civil laws. A civil law may be retroactive, and not violate this clause of the Constitution. It is plainly unjust to punish anyone for breaking a law which was not in existence when he did the act. This is also forbidden to the states as well as the United States. (Sec. 10.)

CLAUSE 4.— DIRECT TAXES.

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

Direct taxes.—

All direct taxes are required by the Constitution to be apportioned between the several states according to the representative population, exactly in the same ratio as the Representatives in Congress are apportioned. As direct taxes are scarcely ever levied by the United

States, this provision is not very important. It was originally intended to prevent any special tax being levied by the United States on slaves, which might be used to tax slavery, and thus make it unprofitable, in the same way that state banks, as banks of issue, were taxed out of existence. This was part of the compromise made between the North and South in the convention.

No capitation tax has ever been levied by the United States, and but few direct taxes.

The Supreme Court has decided that an income tax is a direct tax, and that it must therefore be levied in proportion to population. This practically prevents any income tax being levied.

Clause 5.— Export Duties.

No tax or duty shall be laid on articles exported from any state.

I. Export duties forbidden.—

Export duties are taxes laid on articles carried out of the country. It is the practice in many countries to tax both imports and exports. If exports are taxed, their price will be raised, and the products raised or manufactured in this country cannot be so profitably sold in foreign countries, and perhaps cannot compete at all with the same products from foreign countries. An export duty usually tends to discourage home production. But import duties may be used so as to encourage home production, or at least not to harm it. For this reason, export duties are forbidden by this section.

II. A disputed question—Are all export duties forbidden by this clause?—Probably they are. But it is claimed by some that the intention of this clause is to prevent a discrimination against any one or more states, by export duties levied in those states alone. They claim that an export duty levied equally throughout the Union is not forbidden by this clause.

The courts have never been called upon to decide this case. But in all probability, they would decide any export duty whatever to be unconstitutional. For an export duty on any one article is a tax upon the productions of a few states for the benefit of the rest. Thus, an export duty on cotton would be a tax upon the productions of the Gulf states; an export duty on wheat and beef would be a tax on the productions of the interior states, and an export duty on manufactured goods would be a tax on the industry of the Eastern and Middle states.

Clause 6.—Commercial Restrictions.

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.

Commercial restrictions forbidden.—

The Constitution makes commerce entirely free between the states, and makes unlawful any preference of the commerce of one state over that of another.

While we were British colonies, the British government had put all sorts of restrictions on the commerce of the colonies, in order to favor British merchants at the expense of the colonies, and this was one cause of the Revolutionary War.

The laws of several states, favoring their own commerce at the expense of other states, were among the

causes that led to the adoption of this Constitution. Under the Constitution we have absolute free trade within the limits of the United States.

Clause 7.— Appropriations and Accounts.

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.

Appropriations and accounts required.—

It is forbidden to pay out money except upon an appropriation, and all accounts must be published. This is to prevent frauds on the treasury. It does not prevent all frauds, but it makes them much more difficult. A fraud now is liable to be detected, not only by the executive officers, but also by Congress and by the people.

Appropriations are voted by Congress each winter for the year ending June 30. The head of each department furnishes an estimate of what will be needed in his department for the ensuing year. These estimates must go into details, and show how much is needed for each item of expense. These estimates are carefully considered in each house of Congress, and are frequently cut down. A separate appropriation bill is generally made for each branch of the service. These appropriation bills usually originate in the House of Representatives. They are frequently amended in the Senate, and they may be vetoed by the President.

The account of the receipts and expenditures of the government are published every year in the form of a report of the Secretary of the Treasury.

Clause 8.—Titles of Nobility.

No title of nobility shall be granted by the United States; and no person holding an 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.

I. No titles granted by Congress.—

One of the fundamental principles of our government is, that all men are equal before the law. We cannot have a titled aristocracy without violating this principle. It is true that we cannot regulate social intercourse and make people treat one another as equals in society. Color, ancestry, office, wealth and culture will always create social distinctions. But before the law, every citizen of the United States is equal with every other. No titles of nobility give a few citizens an invidious distinction above the rest.

II. Foreign titles, offices, and presents.—

The Constitution prohibits United States officers from accepting titles, offices or presents from foreign nations. These might easily become bribes to officers to betray their country. Such things have frequently been done in the history of other republics, and have periled their liberties. In case such a present is not meant as a bribe, it is easy to secure the consent of Congress to its being received.

It is a usual courtesy of sovereigns to exchange presents. When the President receives such a present from a foreign sovereign, it is not meant for him as an individual, but for

him as the head of our nation for the time being. Such presents are accepted, and kept as the property of the United States. If courtesy requires a present in return, it is voted by Congress.

1. Officers of the several states are not prohibited by this Constitution from receiving titles and presents from foreign powers; but they are generally prohibited by the state constitutions. 2. Citizens of the United States who do not hold office are not prohibited from accepting titles, offices or presents from foreign sovereigns. And several Americans have accepted office and received honors in foreign countries. These honors have been either for services rendered to those countries or for services rendered to the cause of science.

An amendment was proposed by Congress in 1811, to prevent citizens of the United States taking titles, offices or presents from foreign sovereigns, but it has never been ratified by the state legislatures.

APPENDIX TO SECTION IX.

Additional prohibitions on Congress.—Besides the things prohibited in this section, the following things are expressly prohibited to Congress in other parts of the Constitution:

1. To make any appropriation of money for the army for a longer term than two years. (I, 8, 12.)

2. To increase or diminish the salary of the President during the period for which he is elected. (II, 1, 7.)

3. To diminish the salary of judges during their continuance in office. (III, 1.)

4. To make an attainder of treason work corruption of blood or forfeiture, except during the life of the person attainted. (III, 3, 2.)

5. To erect new states out of parts of states without the consent of the states concerned. (IV, 3, 2.)

6. To impose religious tests for office. (VI, 3.)

7. To make any law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the

freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances. (Am. I.)

8. To make laws infringing any of the personal rights guaranteed in the first eight amendments. In all these amendments, except the first, Congress is not mentioned by name. The intention is to forbid not only Congress, but every branch of the government, legislative, executive, and judicial, from infringing these rights.

9. To exercise powers not given it by the Constitution expressly or by implication. (Am. X.)

10. To re-establish slavery. (Am. XIII.)

11. To question the validity of the public debt. (Am. XIV.)

12. To pay rebel debts or claims for slaves. (Am. XIV.)

13. To deny or abridge the right of citizens of the United States to vote on account of race, color, or previous condition of servitude. (Am. XV.)

SECTION X.—PROHIBITIONS ON STATE LEGISLATION.

Clause 1.—Absolute Prohibitions.

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

I. To make alliances.—

The states are forbidden to enter into any treaty, alliance, or confederation. The power to make treaties is a sovereign power, and is rightly reserved for the United States. If the states could make separate treaties and alliances, there would soon be an end to the Union.

The way would be open for foreign intrigues. Some states would ally themselves with one nation, and some with another; and when these foreign nations were at war with one another, they would be drawn into the war on opposite sides. It would be to the interest of foreign nations to foment every sectional difference; and we should have a civil war on our hands every few years, even if we did not split into three or four separate nations.

II. To issue letters of marque and reprisal.— If a state could authorize privateers, it could easily involve us in difficulties or war with foreign nations. Under the Articles of Confederation, each state could issue letters of marque and reprisal. But it is here wisely prohibited to the separate states.

III. To coin money.—

The power to coin money is given to the United States in section 8, and is here taken from the states. It is an attribute of sovereignty, by all nations reserved for the sovereign power. That sovereign power in this country is the United States, not the several states.

Another reason is to secure a uniform currency all over the United States. If each state could coin money, there might be as many different sets of coins as there were states, and there would be certain to be several different sets. Such a state of things would be very inconvenient for business.

IV. To issue paper money.—

To "emit bills of credit" means to issue paper money. The same reasons that make it best to prohibit state coinage also make it best to prohibit state paper money.

No state can issue paper money, whether it is made a legal tender or not; but state bonds are not to be considered as paper money. But a state could, until 1863, charter banks which should issue paper money, which people could take or not, as they chose. Since then the United States has assumed its perogative on this subject. It has taxed the old state bank bills out of existence; it has created a system of national banks; and it has issued paper money, and made it a legal tender.

V. To make anything but gold or silver legal tender.—

A legal tender is anything which must be accepted in payment of debts, when offered. The present paper money of the United States is such a legal tender. This power of making something besides gold and silver a legal tender is a part of the power of controlling the currency, which is forbidden to the states.

But the states have the power to make gold and silver legal tender to any amount. And a state could make the silver coin of the United States a legal tender to any amount, even though by the United States law it is legal tender only in small amounts.

VI. To pass bills of attainder and ex post facto laws.—

Bills of attainder and ex post facto laws are forbidden to the states as well as to the United States, so that such unjust laws can no more be passed anywhere in this country.

VII. To pass laws impairing the obligation of contracts.—

The states are forbidden to break contracts by law, but the United States can do it, and has done it. For instance, in the case of a bankrupt law, a state bankrupt law will operate only upon contracts made by its citizens after the law was passed. But a United States bankrupt law will release the bankrupt from the legal obligation for debts made before the law was passed as well as afterwards.

But a contract which is for an immoral purpose, or which involves an immoral consideration, is never valid, and may always be broken. The obligation of these contracts is not impaired by the law annulling them, for they never had any obligation.

And a state may prescribe under what conditions a contract shall be made, so as to cover future contracts, but not past ones. Thus a state may say what forms deeds and mortgages must have in order to be valid, but this will only be binding in regard to deeds and mortgages executed after the law was passed.

These words of the Constitution thus reserve to the United States the power of impairing the obligation of contracts, and forbids it to a state.

VIII. Charters of corporations.—Two famous decisions of the United States Supreme Court have defined the power

of states over the charters of corporations. In the celebrated case of Dartmouth College against Woodward, in which Daniel Webster appeared for the college, that court decided that charters are in the nature of contracts between the state and the corporation chartered, and therefore that such charters cannot be repealed or amended by the state without the consent of the corporation. Such corporations are therefore practically perpetual.

But a more recent decision of the Supreme Court in regard to the railroad laws of some western states allows the state the right to control railroad companies in the exercise of their chartered powers, so far as these are public franchises. A railroad company, because it has a charter, is not for that reason freed from any obligation to the public which a private person would have who transported passengers and freight (as he might do with a hack and dray). All common carriers (that is, persons or companies who make a business of carrying passengers or freight) can be controlled in their charges and their methods of management, when it is for the public good, and railroad companies are not exempted from this state control because they have been chartered by the state.

An additional reason exists in the case of railroads. The state exercises for them the right of eminent domain, and allows the railroad to take the land needed for its track and buildings with or without the consent of the owners of the land. As the state thus gives a railroad a public franchise for the public good, it is fair that the same law of the public good should be exercised to prevent extortion or mismanagement of a railroad so as to injure the public.

Nor could a state legislature, by a charter to a railroad company, give up its right to control the tariff and the management of the railroads. That is a right inherent in the people, which the legislature, as the representatives of the people, can exercise for them, but which they cannot sell or give away.

What is said about railroad corporations applies also to

all corporations which have public franchises. For instance, street railways, water companies, gas companies and electric lighting companies all control public franchises, and can therefore justly and legally be controlled in their public acts by the state, or by cities under their charters from the state.

This right of the state to control corporations does not extend further than to the good of the public in general. But as far as the action of a corporation affects only its own members, and does not conflict with existing state laws, or with public policy, the state will not interfere. For instance, within these limits a state cannot interfere with the internal government of a church, or of a secret society, or of a literary association, or any other voluntary organization. It can protect them in their property, and prevent their meetings being disturbed, but will leave them to manage their internal affairs according to their own rules.

IX. To grant titles of nobility.—

The states, as well as the United States, are forbidden to grant any titles of nobility. If this is forbidden to the United States, it certainly ought to be forbidden to the states.

As a historical fact, it may be interesting to know that no American titles of nobility have ever been granted, except in the famously foolish constitution drawn up for Carolina by the philosopher John Locke. These titles soon died out, and no others have ever been created. Persons have come to this country who held titles in foreign lands, and have even acquired citizenship here; and American citizens have been honored with titles abroad. But since our independence, no title of nobility has ever been made or recognized by our laws. Those who are nobles in foreign lands, here are simple citizens.

Clause 2.—Conditional Prohibitions.

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

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

I. To lay duties on imports and exports.—

When the states could lay taxes as they pleased on imports and exports, it led to much injustice of one state toward the commerce of another, and much jealousy and rivalry between states. This was one of the great evils of the old confederacy which the Constitution was intended to remove. The Constitution intends to give the United States the complete control over foreign commerce and commerce between the states, and to forbid any such control to the states.

It would have been simpler to have forbidden the states absolutely from laying duties on exports or imports. But the convention meant to leave it open to Congress if it chose to let the states appoint revenue officers and collect duties under United States laws. The states had been collecting duties for themselves. And it might be convenient for a time to still leave it to the states, only making the duties uniform and paying the net revenue from duties into the United States treasury.

But Congress at once assumed the power of laying duties,

and has never consented since to give up any part of that power to the states. The states have never collected duties under this clause, and probably never will. This clause, so far as it might authorize state custom houses, is practically obsolete.

But the states may pass inspection laws to secure good measure in goods offered for sale, or to prevent goods dangerous to health being sold. And they may charge fees for the inspection; enough to pay the expenses of the inspection, and no more.

II. To impose tonnage duties.—

Duties of tonnage are duties on ships according to the amount of freight they can carry. The tonnage is the amount of freight they can carry; thus a ship of a hundred tons burden is one that can carry a hundred tons of freight. A tonnage duty is a duty on commerce, and it is put under the control of Congress like all that relates to commerce. The consent of Congress is necessary before a state can lay a tonnage duty. No such power has ever been given a state.

III. To keep a standing army or navy.—

No state can keep an army or navy in time of peace, without the consent of Congress. The national government usually will reserve that right to itself. But should an extraordinary occasion arise, Congress has the power to authorize a state or states to keep troops or ships of war in time of peace. In time of war, it may be very necessary for a state to raise an army or a navy for its own defense and that of other states. In that case the consent of Congress need not be asked.

It is not intended by the words "keep troops" to prevent states organizing and arming their militia in time of peace as well as war. (Compare section 8, clause 16, of this article, and Amendment II.) It is a standing army that is forbidden.

IV. To make agreements and compacts.—

How do the agreements and compacts named here differ from the treaties, alliances and confederations named in the first clause of this section? In the one case, a state is prohibited absolutely from making them; in the other case, it is only required to gain the consent of Congress.

The natural interpretation is, that these compacts and agreements refer only to such business transactions as states sometimes must have, as well as private individuals; while treaties, alliances and confederations refer to political agreements. The latter are absolutely forbidden to the states.

No state can hold any *political* relations whatever, except as a member of the Union. It cannot have any political relations with other states or with foreign nations. That is all reserved for the United States. But a state may have *business* relations with other states, or with foreign powers. But as these could easily pass into political relations, the power is reserved to the United States to control these business relations. Examples of business relations between the states are, "questions of boundary, interests in land situated in the

territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other. Such compacts have been made since the adoption of the Constitution." (Story.)

The consent of Congress to such compacts need not be expressed. It may be inferred from the legislation of Congress on the subject.

V. To engage in war.—

A state may engage in war if actually invaded or threatened with invasion; and as the necessity would be pressing, it would not be needful to wait for the United States authorities; but the state could defend itself at once with all the force at its command. But unless in self-defense, a state cannot make war, but must wait the decision of the United States government. If Congress should ever authorize one or more states to engage in war, it would not be a state war, but a United States war. There is no way in which some of the states can get into a war, defensive or offensive, without involving the rest in it too. If a state is invaded, it is also the United States which is invaded, and not only the state, but the United States, which will resent the invasion. If a state goes to war, the United States is responsible for it, and must either uphold it or put a stop to the war at once. The Constitution thus gives each state the right of self-defense, but reserves all other powers of war to the United States.

VI. Other prohibitions on the states.—In other parts of the Constitution, the states are prohibited from the following things:

1. To deny the citizens of another state the privileges of a citizen. This is implied in Art. IV, Sec. 2, Clause 1.

2. To refuse to give up persons charged with crime in other states. This is implied in Art IV, Sec. 2, Clause 1.

3. To refuse to give up a person held to service in another state. This is implied in Art IV, Sec. 2, Clause 2. As slavery is now abolished, this provision is now practically obsolete.

4. To re-establish slavery. (Am. XIII.)

5. To abridge the privileges or immunities of citizens of the United States. (Am. XIV, Clause 1.)

6. To deprive any person of life, liberty or property without due process of law. (Am. XIV, Clause 1.)

7. To deny any person within its jurisdiction the equal protection of the laws. (Am. XIV, Clause 1.)

8. To fill offices with unpardoned rebels. (Am. XIV, Clause 3.)

9. To assume the rebel debt or claims for the loss of slaves. (Am. XIV, Clause 4.)

10. To deny the right of citizens of the United States to vote on account of race, color, or previous condition of servitude. (Am. XV.)

The Supreme Court has also decided that the following powers are denied to the states, by implication:

1. To interfere with the exercise of any authority belonging to the United States.

2. To interfere with the property of the United States by taxation or otherwise.

3. To lower the value of United States bonds or paper money by taxation.

APPENDIX TO PART III.

STATE AND LOCAL LEGISLATION.

I. State and local legislation.—

In a centralized republic, as in that of France, all legislative powers that are allowed to be exercised are vested in the one national legislature. But in a federal republic, like that of Switzerland, some legislative powers are given to the national legislature, some to the state legislatures, and some are reserved by the people. The same distinction exists between the legislative powers in limited monarchies. In Great Britain and Ireland, Parliament has all the legislative powers of the three kingdoms; but in the Empire of Germany the Reichstag has only a part of the legislative powers, and a part are exercised by the states in its Landtag.

The United States Constitution draws the line between the powers of the national and the state legislatures, and also prohibits certain legislative powers to one or to both of them. This was a necessity of the situation when a national government was organized for a federal republic composed of separate states.

But the idea of local self-government is older than the formation of our national government, and attaches not only to the states, but to smaller divisions. It existed in each of the states when the Constitution was adopted, and in the colonies which preceded the states, and was brought to America from England, where it

had existed in varying forms since the Anglo-Saxon settlement of Britain.

The principal local subdivisions in England when this country was settled were the county, the parish, and the borough. These were brought over to America by the English colonists, and in the colonies, as in the mother country, local matters were largely left to local action.

II. Three types of local government.—

There were, when the United States Constitution was adopted, three types of local government in the three great divisions of the country.

The Southern states had the county government, the New England states the town government, and the Middle states the mixed town and county government.

The Southern county government was substantially the same as the English county government, and was aristocratic. Most of the local powers were in the hands of county officers who were appointed by the governor from the local aristocracy, and after the state churches were abolished the parishes had very little left to do. The counties were represented in the state legislature, not the parishes.

The New England town government was democratic. The voters assembled in town meeting and legislated for the town and elected its officers. There was also a county government, but with very limited powers. The towns were represented in the state legislature, not the counties.

The Middle states had various combinations of town and county government. The New York type was the combination of a Massachusetts democratic town government with a Virginia aristocratic county government, but with a county board of supervisors—one member elected by each town.

Since then the growth of the democratic idea has led to county officers usually being now elected instead of appointed, and to the adoption of the New York type of local government, or some modification of it, throughout the Northwest. More than half the population of the United States now have a local government consisting of a democratic county and town government, enabling the people of each town and county to decide for themselves their own local affairs, without reference to the state legislature or executive.

When the United States Constitution was adopted nearly the whole population lived in the country. Now more than half live in cities and villages. The English boroughs each had a charter, and so our villages and cities now all have charters from the state legislature. In many states general laws have been passed under which all villages or cities are incorporated. These charters or acts of incorporation are in the nature of local constitutions for the cities and villages, and the state laws governing town and county organization are in the nature of constitutions for the towns and counties.

WORK FOR THE STUDENT.

I. The county government.—1. Locate and bound your county. Does your state have county commissioners or county boards of supervisors?

2. If there are county commissioners, are there three or five in a county, or are there a greater number?

3. How are they elected, when, and for what term?

4. If there is a county board of supervisors, how is that board composed?

5. What other county officers do you have, such as sheriff, county clerk, register of deeds, and superintendent of schools?

6. How are each of these chosen, when and for how long a term?

7. How are vacancies filled in each of these offices?

8. What salary, or fees, are paid each of these officers?

9. What are the powers and duties of the county board, or county commissioners?

10. What are the powers and duties of each of the other county officers?

11. Give the names of the persons now filling each of these offices in your own county.

II. The town government.—1. Do you have town (or township) government in your state?

2. If so, are you in a town (or township), or are you in a village or a city?

3. If you are in a village, has it an entirely separate jurisdiction, or is it also a part of the town?

4. If you are in a town, what is its name, and how is it located and bounded?

5. If you live in a state having town government, even if you are in a village or city, inform yourself as to the system of town government.

6. Is there a town meeting of the voters, and what are the powers of the town meeting?

7. Do you have town supervisors, or selectmen, or township trustees?

8. How many are there of the above officers, how elected, and for what term?

9. What other town officers do you have, such as town clerk, constables, assessors, justices of the peace, etc.?

10. How are each of these officers chosen, when and for how long a term?

11. How are vacancies filled in each of the above offices?

12. What salary or fees are paid each of the above officers in your town?

13. What are the powers and duties of the town board of supervisors, selectmen, or township trustees?

14. What are the powers and duties of each of the other town officers?

15. Name the persons now filling each of these offices in your town.

III. Subdivisions of the town.—1. Do you have the district system of school government?

2. If so, what are the district officers, and when are they elected?

3. Do women vote in the election of school district officers in your state, and are women eligible to school offices?

4. What are the powers of a school district meeting?

5. What are the powers and duties of the school district officers?

6. Name the school officers of your town or school district.

7. Have you separate road districts in your town?

8. If so, how are the supervisors of highways or pathmasters chosen, and what are their powers and duties?

IV. Village government.—1. Do you live in a village?

2. If not, name one or more villages near you.

3. Do you know whether these villages have an entirely separate organization from that of the town in which they are located?

4. Is there a general law in your state for the organization of villages, or does each village have a special charter? In

case there is a general law, do the villages with which you are acquainted have special charters for any reason?

5. How is the village board composed, how is it elected, and for how long a term?

6. What other officers are there in the village?

7. How are these officers chosen, and for how long a term?

8. How are vacances filled?

9. What are the powers and duties of such officers?

10. What is the compensation of such officers, by fees or by salary?

11. If you live in a village, name all the village officers.

V. City government.—Do you live in a city?

2. If not, name one or more cities near you, of which you know something.

3. In your state are cities organized under a general law or does each city have a special charter? In case there is a general law, is the city you specially know about organized under that law, or under a special charter?

4. In your city, or the one of which you know something, how is the mayor elected, when and for what term?

5. Does the legislative body of the city consist of one or of two branches, and what are they called?

6. How are its members elected, when and for what term?

7. What are the principal officers of the city besides these?

8. How are these officers chosen and for how long a term?

9. How are vacancies filled?

10. What are the powers and duties of each?

11. What is the compensation of each?

12. Name the persons now filling each of these offices.

Part IV.

The Executive.

As for an absolute monarchy, as it is called, (that is to say, when the whole state is wholly subject to the will of one person, namely, the king,) it seems to many to be unnatural that one man should have the entire rule over his fellow citizens, when the state consists of equals. . . . And for this reason it is as much a man's duty to submit to command as to assume it, and this also by rotation; for this is law, for order is law; *and it is more proper that the law should govern, than any one of the citizens.* Upon the same principle, if it is advantageous to place the supreme power in some particular persons, *they should be appointed to be only guardians and servants of the laws.*—ARISTOTLE, Politics, Book III, ch. 16.

ARTICLE II.

SECTION I.—ORGANIZATION.

Clause 1.—In Whom Vested.

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

I. Executive department carries out the laws.— As the legislative department of the government is to make the laws, so the executive department of the government is to carry out and enforce the laws. In making laws we need deliberation, and the combined wisdom of many. In executing the laws we need the decision and force which a single will can give. Therefore, as the legislative power is vested in a Congress of two houses, each composed of many persons, representing all parts of the country and all interests, so the executive power is vested in one person, assisted by many others under his direction.

The chief executive of this country is not called king or emperor, because that would imply that he inherited his place as of right. He is called simply President.

II. The executive power is made distinct from and independent of the legislature.— Under the Confederation, Congress when in session was the executive as well as the legislative department

of the government; and when Congress was not in session, a committee of Congress was the executive. It was found by experience that the legislative and executive powers could not be combined profitably. Besides the general weakness of the government under the Confederation, there was a special weakness of *action*. Congress could pass laws and resolutions, but it could not put them into effect. So keenly was this felt, that no opposition was made in the Constitutional Convention to an executive distinct from and independent of Congress. We thus return to the usual form of representative governments, a government in which the power that makes the laws and the power that executes them are kept distinct from and independent of each other. This was the form of the English government at that time, and it had been of the colonial governments.

In the case of those states which during and after the Revolution made their executives dependent on their legislatures, experience had shown the same defect as in the Confederation. And these states also soon returned to the typical form of representative government—a government consisting of three distinct parts, legislative, executive, and judicial, each independent of the other.

The most noteworthy exception to this is the modern English cabinet government. Without any express authority of law, the custom has grown up in England that the leader of the party in power in the House of Commons shall be Prime Minister, and shall appoint for his associates in the cabinet the chiefs of his own party. In this way the House of Commons has made itself virtually the executive as well as the legislative body. This has worked well enough in England thus far. But the attempt to carry out the same policy in

France has not succeeded very well, and it is a serious question whether the English cabinet government will always work well.

In Germany the ministers are appointed by the Emperor, and hold office without regard to the wishes of the Reichstag. The executive is thus separate from and independent of the legislature.

III. The executive power is vested in one man.

The essential thing in a good executive is energy of action. This can only be secured by putting power and responsibility in the hands of one man. No council or committee will act with such decision, steadfastness, secrecy, activity and dispatch as one competent man will do.

Where several persons are associated together in any governing body, there are sure to be differences of opinion and party spirit, and there are apt to be personal jealousies and secret intrigues. These are fatal to any prompt or decisive action, which is the very thing needed in an executive. The experience of the Confederation taught the framers of the Constitution that it is safer to put the executive power in the hands of one man than to vest it in a council. The experience of all civilized governments confirms this.

IV. The executive is made responsible to the people.—

An irresponsible, unlimited executive is a despotism. The executive ought to have power, but not irresponsible

or unlimited power. If the President could not be called to account for his actions, he would be able to do what he pleased, and might usurp power in one way or another, until he became monarch of a kingdom instead of president of a republic.

The President is limited in his powers by this Constitution, which defines his duties. Should he overstep that limit, or otherwise grossly betray the trust confided in him by the people, he could be impeached and removed from office.

But he is held responsible to the people in a far more effectual way by being elected for a limited term. The fact of election gives the people an opportunity to have such a President as the majority of them wish. Even if they should be deceived in their choice, or if the President, after his election, should be led astray by some foolish policy or some ambitious design, he cannot do much mischief or get many persons to help him in any very foolish or dangerous designs in the short time he has to rule.

On the other hand, the hope of re-election will lead a President to perform the duties of his office and to carry out the wishes of the people as faithfully as he can. Thus the executive is limited and made responsible—

1. By being the choice of the nation.
2. By his term of office being short.
3. By his hope of re-election.
4. By the fear of impeachment.

V. All executive officers are agents of the President.— The executve power is vested in the President. But of course it is impossible for him to do everything himself. Nearly all the work of the executive department is done by officers of various kinds. As these officers are appointed by the President, or by other officers whom he appoints, and as they may be removed at pleasure, they are for all practical purposes his agents or clerks, and what they do he may be said to do. For instance, the act of collecting the customs duties is an executive act. The President, however, cannot collect those duties himself in all the ports of the United States, but he appoints the Collector of Customs and his chief assistant in each port, who, with the assistance of clerks working under their direction, collect the customs. But as these officers are responsible to the President for the faithful performance of their duties, and can be removed by him, it is really the President who collects the customs. If there is corruption and mismanagement in the New York custom house, for instance, it is the President's duty to see that it is stopped by removing the guilty officers; and if he does not do so, he makes himself responsible for the corruption. So, also, with every branch of the service. The executive *power* is vested in the President, but that power is carried into effect by the various executive officers.

But these officers are not merely agents of the President; they are agents of the people. The executive power is intrusted to the President to be used for the public good, and according to law. These officers are not merely subject to the President; they are also subject to the law, and therefore, in some degree, to the law-making body. Congress controls the subordinate executive officers in the following ways:

1. Congress creates by law the offices which they fill.

2. Congress can abolish any of these offices by law, and thus indirectly remove an officer.

3. These officers are paid by appropriations made by act of Congress, which may be withheld, and the officers thus be compelled to resign for lack of pay.

4. Congress, or either house, can appoint an investigating committee, who will examine into the conduct of any officers of the government, and publish the results to the people; thus, if reform is needed, rousing public sentiment to demand a reform.

5. Congress, or either house, can pass a resolution requesting the President to remove certain officers.

6. In cases of flagrant misconduct, if the President should refuse to remove the guilty official, the House of Representatives can impeach him; and if found guilty by the Senate, he will be removed from office.

In one or more of these ways Congress can, to a large extent, prevent or punish corruption or treason in office. If the President should undertake to carry out some foolish or ambitious project, he would need the assistance of many officials to do it. But Congress can always interfere with any such designs, by some of the methods named above. In addition to this, the Senate has also a share in the President's appointments, as we shall see.

VI. Term of office.—

The President's term of office is four years. This is twice as long as that of a Representative, and two-thirds as long as that of a Senator.

The term of office of President, Vice-President, Representatives and Senators begins and ends on the fourth of March in the odd years (except when a vacancy is filled). On the fourth of March, at noon, in every odd year, the terms of office of all Representatives and of one-third of the Senators come to an end, and the terms of office of their successors begin. Every other odd year, on the fourth of March, at noon, the terms of office of the President and Vice-President also come to an end, and the terms of office of their successors begin. As the election for President and Vice-President takes place every leap-year, this term of office begins on the fourth of March in the year next following each leap-year. With this

clue, the student can easily remember the years of each Presidential term, except where cut short by death.

VII. Re-election of the President.—The letter of the Constitution does not forbid the re-election of a President any number of times. But it has become a well understood custom, though never formally enacted, that the President may be re-elected once, but no more. This custom was begun by Washington when he declined a third term, on the ground that two terms are enough for a President. It was confirmed by the action of Jefferson in also declining a third term, and by the constant practice of the country since then. Some Presidents have wished a third term, but the people have refused to grant it. It may now be considered a settled part of the unwritten Constitution, that a President may be elected twice, but no more.

VIII. The Vice-President.—

The Vice-President is elected for two purposes:

1. To fill the place of President when there is a vacancy in that office.

2. To preside over the Senate meanwhile. When the Vice-President becomes President, he does not preside over the Senate.

Four cases have occurred in which the Vice-President has become President. At the death of President Harrison, Vice-President Tyler became President; at the death of President Taylor, Vice-President Fillmore became President; at the death of President Lincoln, Vice-President Johnson became President; at the death of President Garfield, Vice-President Arthur became President. No case has occurred in which the Vice-President has become President for any other reason than the death of the President.

Clause 2.—Presidential Electors.

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.

I. The President elected indirectly.—

In the Constitutional Convention it was first voted that the President should be elected by Congress. But on further consideration, the plan was adopted of electing him by Presidential electors. The Convention did not intend that the President should be elected by the people. They thought that the chief of the nation ought not to be elected by the passions and prejudices that often control a popular election, but by the calm judgment of a few of the best men of each state.

The idea was a fine one in theory; but in practice it did not work as its authors expected it would. In actual practice the President is elected by the people indirectly. The electors are always pledged beforehand to vote for certain persons for President and Vice-President; and they are only so chosen because they are so pledged. The Presidential electors have never failed to vote for the candidate of their party, except in the case of the death of Horace Greeley, who died after the electors were appointed, and before they met. In that case the Democratic electors voted for several different persons, according to their own individual preferences, as it made no difference with the result.

II. Appointment of Presidential electors.—

The manner of choosing Presidential electors is left to the several states. The following different methods have been followed in some or all of the states:

1. They have been chosen by the state legislature. This was the usual method at first.

2. They have been chosen in several states by the people voting by districts. This would be the fairest method, and would represent the will of the people most accurately, if all the states chose their electors in that way, and if the districts were all fairly apportioned. Under this plan, a state will generally choose some of its electors from one party and some from the other, while under either of the other plans, the party which has a majority, however small, in the state, will carry all the electoral votes of the state.

3. They are now chosen in all the states by vote of the people on a general ticket. Whichever party carries the state has all the electoral votes of the state.

The case has several times occurred that two smaller parties in one state have combined against the strongest party on an electoral ticket divided between the two, and have thus carried a "fusion ticket." In this way the electoral vote of a state has several times been divided. The case has also occurred, when the vote was very close, that one or two electors on the minority ticket have "run ahead of their ticket," and thus have been elected while all the rest of the electors of their party in the state have been defeated.

The power of determining the method of choice of Presidential electors is absolutely in the power of each state legislature, and it is possible for a legislature at any time when

a Presidential election is pending to repeal the state law by which electors are chosen by the people of the state, and then proceed to elect them itself. The objection to such action would be that it would be a reversal of the unwritten constitution—the political habits of the people.

III. Qualifications and number of Presidential electors.—

Only one qualification is prescribed. No Senator or Representative, or any United States officer, can be a Presidential elector. This was intended to keep the electors as free as possible from personal interests in the result of the election. But as electors now are only machines to cast certain votes, this provision is of no practical importance. It has been evaded in various ways.

The number of electors is the same as the number of Senators and Representatives to which the state is entitled in Congress. The small states thus have a greater voice in the election of President than their population would entitle them to.

Clause 3.—Election of President and Vice-President.

Twelfth Amendment.

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 government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the

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

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

I. Election by electors.—

The Presidential electors thus chosen elect a President and Vice-President, if they can, under the following restrictions:

1. *They meet in their respective states.* They do not all meet in one place. They meet in their own states, and usually at the state capitals. The object of this was to prevent bargaining for votes, which would be easy if they all met in the same place. Vacancies in the College of Electors in any state are filled in such way as that state has prescribed by law. This is done in most states by the electors themselves. If a vacancy exists

by reason of death, absence, or ineligibility of an elector, the College of Electors selects some one to fill the vacancy, and then proceeds to vote for President and Vice-President.

2. *They vote by ballot.* The vote by ballot is frequently used in elections in the United States, for the purpose of allowing the voter to conceal his vote, and thus to be more independent. It is used for that purpose here. But as the Presidential electors have ceased to be independent voters, and as everyone knows how they will vote long before they meet, this provision is practically useless.

3. *They ballot for President and Vice-President separately.* This avoids the error of the old process, which led to this amendment.

4. *Only one of these can live in the same state with themselves.* This is to prevent both President and Vice-President being from the same state. They have usually been not only from different states, but from different sections of the country.

5. *A majority of the electors is required to elect.* A majority is more than half of the whole number of votes. A candidate may have the largest number of votes and not have a majority, and thus fail to be elected by the electors.

6. *The electors vote but once.* This follows from their meeting in different places. Before the invention of the telegraph it would have been impossible to have even got the news of the result in time to vote a second time,

if there was no election the first time. And even now it would be quite inconvenient for more than forty sets of men, meeting in as many different places, to keep on voting and announcing the results of the ballot. The electors must therefore elect a President or Vice-President on the first ballot, or not at all.

II. Counting the votes.—

The votes thus cast are counted as follows:

1. The electors in each state make a list of all persons voted for by them for President and a list of all persons voted for by them for Vice-President. They sign these lists and certify that they are genuine. All the electors in each state sign and certify these lists.

2. Three sets of these lists exactly alike are made out, of which one is sent to the President of the Senate by mail, another by special messenger, and the third is delivered to the judge of the United States district court for the district in which the electors meet. If the certificates of election from any state are not received by the fourth Monday in January, the Secretary of State is required to send a special messenger to the district judge for the certificate in his possession.

3. The President of the Senate, who may or may not be the Vice-President (I, 3; 4 and 5), presides over a joint convention of the Senate and House of Representatives. In their presence he opens the certificates, which are read by clerks, and the votes for each candidate are added up and announced by tellers appointed

from each house. No provision is made for the case of a disputed election of Presidential electors in any state, except that time is now given for such a case to be tried in the Supreme Court of the state before the electors meet.

4. If any candidate for President is found to have a majority of all the electoral votes cast for President, he is thereupon declared elected. And if any candidate for Vice-President is found to have a majority of all the electoral votes cast for Vice-President, he is declared elected Vice-President. If in either case no one has a majority, there is no election by the electors.

III. Election of President by the House of Representatives.—

When the Presidential electors fail to elect a President, the right of election goes to the House of Representatives under the following conditions:

1. *No candidate can be voted for except the three who received the highest number of votes for President.*

2. *The vote is by ballot.*

3. *The vote is by states, each state having one vote.* The vote of each state is given as the majority of the members from that state who are present may direct. If the vote of a state is equally divided, that fact is reported, and the vote of that state is not given to any candidate.

4. *A quorum for the purpose of voting for a President must consist of a member or members from two-*

thirds of the states. A quorum for ordinary purposes consists of a majority of the members elected.

5. *A majority of all the states is necessary to a choice.* If a state is divided, its vote helps to prevent an election.

Thus in 1801, when the election was thrown into the House of Representatives, there were sixteen states; of these, eight voted for Jefferson, six for Burr, and two were divided. There was therefore no election. Thirty-five times the House voted with the same result. On the thirty-sixth ballot, some members from the two divided states, who had voted for Burr, purposely left the room. The members from those states who remained could then give a majority in each for Jefferson, so that he had ten states and Burr six, and Jefferson was elected.

6. *The House must proceed at once to elect a President.* If they fail to elect before the fourth of March, then the Vice-President just elected becomes President. The reasons for this are, that the President's term of office must begin on the fourth of March, and that the House of Representatives ceases to exist on the same day, and the new House comes into power.

IV. Election of Vice-President by the Senate.— When the Presidential electors fail to elect a Vice-President, the choice devolves upon the Senate, under the following conditions:

1. *No candidate can be voted for except the two who received the highest number of votes for Vice-President.* This insures a speedy election.

2. *A quorum to elect a Vice-President is two-thirds of the whole number of Senators.*

3. *A majority of all the Senators is necessary to a choice.* It is not merely a majority of all present and voting, but a majority of all.

V. The old method of electing President and Vice-President.—When the Constitution was first adopted it prescribed a method of electing President and Vice-President somewhat different from the one now in use. The new method was adopted by an amendment to the Constitution in 1804, in consequence of the danger to the country shown in the disputed election of 1801.

The essential difference between the old plan and the new is, that under the old plan each elector voted for two persons, without saying which one he wished for President or Vice-President, while under the present plan each elector votes for two persons, distinctly naming one for President and the other for Vice-President. All the other changes are such as are made necessary to carry out this change.

Under the old plan, the President might easily be of one political party, and the Vice-President of the other party. But under the present plan, that could only occur in case the Presidential electors failed to elect, and the Senate and House of Representatives were controlled by opposite parties.

VI. The disputed election of 1876.—Just as the disputed election in 1801 called the attention of the country to one defect in the Constitutional provision for the election of President and Vice-President and led to the twelfth amendment, so another disputed election called the attention of the country to another defect.

No provision is made in the Constitution for the case of a disputed election in a state. It was intended that the certificate of the proper officer in each state should attest the election of the electors, and that their certificate should attest their own vote. An extraordinary case arose in 1877, when

Hayes and Tilden, the rival candidates, each had a certificate of election from a set of electors in several states. As the Senate and House were controlled by opposite parties, neither would yield. Just before the time for counting the votes, an extraordinary tribunal was created, consisting of five Senators, five Representatives, and five Judges of the Supreme Court, to whose decision these contested cases were referred. All of them were decided in favor of Hayes, and he was declared elected President by one majority.

It was claimed by one side that the Constitution gave the President of the Senate the right to decide which were the legal electoral votes; and it was claimed by the other side that Congress or either house could refuse to receive the vote of any state where there was a dispute in regard to it. Both these claims were preposterous. The fact is, the Constitution is defective at this point, in not providing for the contingency, and it should be amended.

Clause 4.—Time of These Elections.

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.

Time of Presidential elections.—

Congress has determined the time of these elections by law. The following table will aid the memory:

1. *Election of electors*, the Tuesday after the first Monday of November (in each leap year and all centennial years), the day on which Representatives are also chosen.

2. *Electors vote for President and Vice-President* the second Monday in January.

3. The Secretary of State sends for missing returns the fourth Monday in January.

4. The votes are counted the second Wednesday in February, and thereafter till a President is elected, but not longer than till the fourth of March. The same dates hold for the Senate in electing a Vice-President.

5. The President is inaugurated the fourth of March. If that falls on Sunday, he is inaugurated on the fifth.

The long time now given between the election of electors and their meeting to vote for President and Vice-President is given to allow all questions relating to who are the lawful electors in each state to be settled by the proper authorities in each state according to its own laws. In most states there is now a special provision for trying all such disputes at once in the highest court of the state. The time of the meeting of electors has been changed from the first Wednesday in December to the second Monday in January, in consequence of the experience in the disputed election of 1876.

Clause 5.— Qualifications of President and Vice-President.

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.

I. Citizenship.—

The President must be a natural-born citizen of the United States. The President must be a citizen by inheritance, not by adoption.

He cannot be a naturalized citizen; but it is possible that a person born out of the United States might be President. The child of American parents born in foreign lands would be a natural-born American citizen, but not a native-born citizen.

Naturalized citizens who were citizens at the time the Constitution was adopted were made eligible to the office of President. But none of that class are now alive, and none have ever been elected President. This provision is therefore obsolete.

II. Age and residence.—

The President must be at least thirty-five years old.

He must have resided within the United States at least fourteen years.

This residence need not have been immediately before his election, but may have been at any time previously. The object of this provision was to prevent any person who had recently been naturalized from being elected President, soon after the Constitution was adopted. This would also cover the case of natural-born citizens who had spent nearly all their lives abroad. A sufficient residence is required to make the candidate for the Presidency familiar with the institutions of the country he aspires to govern.

III. Qualifications of Vice-President.—

The Vice-President must have the same qualifications as the President, because he may become President.

IV. A table of qualifications.—The following table will aid the student's memory:

	Age.	*Citizenship.*	*Residence.*
President	35	Natural-born citizen ..	Fourteen years in the United States.
Vice-President	35	Natural-born citizen ..	Fourteen years in the United States.
Senator	30	Nine years a citizen...	In the state from which chosen.
Representative	25	Seven years a citizen ..	In the state from which chosen.

The following is a table of additional particulars:

	Term of office.	*How elected.*	*Vacancies, how filled.*
President	4 years	By electors	By Vice-President.
Vice-President	4 years	By electors	Not filled.
Senator	6 years	By state legislature	By governor or state legislature.
Representative	2 years	By the people	By the people of the district.

Clause 6.—Vacancies.

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.

I. Vacancies in the Presidency and Vice-Presidency.—

The office of President may become vacant by death, by his removal on impeachment, by his resignation, or by such disability as insanity or extreme and long-continued sickness. It may also be vacant in case of the failure of both the Presidential electors and of the House of Representatives to elect a President before the fourth of March. (Clause 3.)

The absence of the President from Washington does not create a vacancy. Presidents have performed many official duties at a distance from the capital.

When the President is impeached, there is no vacancy. When Andrew Johnson was impeached, he held his of-

fice, and as the Senate acquitted him, no vacancy occurred.

II. Vacancies in the Presidency, how filled.— When a vacancy exists, and there is a Vice-President, he fills that vacancy, unless he also is incapacitated in some way. If the President should be only disabled from performing the duties of his office by insanity or sickness, the Vice-President would act as President for the time being, until the disability cease. But when the vacancy is a permanent one, the Vice-President becomes President. Only four vacancies in the office of President have occurred, in each case by the death of the President, and in each case the Vice-President has succeeded to the office of President.

III. Vacancies in the Vice-Presidency.— The office of Vice-President may become vacant by his death or resignation, by his removal on impeachment, or by his promotion to the office of President. When a vacancy occurs it is not filled, but the duties of the Vice-President as President of the Senate are performed by the President *pro tempore* of the Senate.

IV. Vacancies in both Presidency and Vice-Presidency.— The Constitution leaves it to Congress to provide for the case of a vacancy in the office of both President and Vice-President. Congress has provided that in case of such double vacancy, the Secretary of State, or in case there is no Secretary of State, one of the other Cabinet

officers in the order of precedence of their department, shall act as President until the disability be removed or a new President be elected. In that case a special election must be held the next fall, and a President must be elected to fill the unexpired term, unless it is the last year of the term. This case has never arisen.

When the Vice-President becomes President on the death, removal or resignation of the President, he holds the office for the whole of the unexpired term. But if the Secretary of State or some other Cabinet officer should ever fill a vacancy, he would be only Acting President, and he would only hold the office of President until a special election could be held. But if the vacancy occur in the last year of the President's term, the Acting President holds the office for the remainder of the term.

V. Disputed question.—*Would the absence of the President from the United States create a vacancy?* The case has never occurred, and therefore no positive answer can be given. But most of the states have provided that the absence of the Governor from the state creates a vacancy in the office during his absence, and that the Lieutenant-Governor shall act as Governor during his absence from the state; and this would lead us to suppose that if the case should ever arise, it would be decided that the absence of the President from the United States creates a temporary vacancy.

Clause 7.—Salary.

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

The salary of the President.—

The salary of the President was twenty-five thousand dollars until 1873, when it was raised to fifty thousand dollars. Besides this, the United States has built a house called the White House, and keeps it furnished for the President's use. He also has special appropriations for any special expenses. He is expected to spend full as much as he receives. No executive of any country as large as this receives nearly so small a salary.

The salary of the Vice-President was first five thousand, then eight thousand, then ten thousand, and is now eight thousand a year.

The reason for neither increasing nor diminishing the salary of the President during his term, as provided by the Constitution, is to make him more independent of Congress. This was evaded when President Grant's salary was raised for his second term, before his first term had ended, but after he had been elected for a second term.

CLAUSE 8.—OATH OF OFFICE.

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."

I. The oath of office.—

The oath of office may be administered to the President by any judge; but the practice is to have the Chief Justice of the Supreme Court perform this duty. The

Chief Justice of the Supreme Court is the highest officer who can administer an oath, and ranks next to the President.

The President's oath of office contains two pledges:

1. To faithfully execute the office of President of the United States.

2. To the best of his ability to preserve, protect and defend the Constitution of the United States.

The oath is a very simple oath as compared with many oaths of office. It embraces only the two most essential points. If the President has conscientious scruples against taking an oath, he can affirm instead of swearing.

II. Inauguration of the President.—

The President is inaugurated on the fourth of March, at noon. Besides other ceremonies, the oath of office is administered, and the President delivers an inaugural address. The fourth of March, 1877, came on Sunday. It was a legal question whether the President's term in that case ended on the fourth or fifth of March. The difficulty was avoided by President Hayes taking the oath of office in private on the fourth, and again in connection with the inaugural ceremonies on the fifth, and by President Grant doing no official acts after noon of the fourth of March.

In the four cases when the Vice-President became President, he took the oath of office, but there were no public inaugural ceremonies.

SECTION II.—POWERS OF THE EXECUTIVE.

Clause 1.— Some Sole Powers of the President.

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.

I. The President is Commander-in-Chief.—

In order to execute the laws of the United States, and to protect the nation from invasion or insurrection, it is necessary that the President should have charge of a military force. In almost all governments the chief executive officer is commander-in-chief, and in creating a chief executive for the United States it was natural and necessary that he should have command of the army and navy. These forces are subject to the general rules made by act of Congress (I, 8, 14), are supported by appropriations made by Congress (I, 8, 12), and can be reduced in number, reorganized or abolished altogether by Congress (I, 8, 12). So that the President cannot well use these forces for very harmful purposes.

The military forces under his command are the regular army, the regular navy, a volunteer army and navy whenever these are authorized by Congress, and the militia of the several states when called into the United States service. All these forces are under the command of the President, subject to the powers of Congress named above. But the militia of any state are under the command of the President only when

actually in the service of the United States. Otherwise they are under the command of the governors of their respective states.

II. The President need not command in person.—The President may command the army in person, or he may put one or more military officers in command to carry on military operations under his general directions. The latter has always been the case. The President has never actually taken the field in person; but he has appointed officers to command, with certain general instructions, which they were to carry out the best they could with the means at their command.

The President has the right to make additional rules for the army and navy, so far as they do not conflict with those established by law.

III. Executive departments.—

This clause by implication provides for executive departments. These have been established by law, and increased in number from time to time. These departments again are divided into bureaus, each with its officers and employes.

The numbers, titles and compensation of these officers are fixed by law. The principal officers are appointed by the President, with the advice and consent of the Senate, and can be removed at pleasure. The clerks and employes in each department are appointed by the chief of that department, and can be removed at pleasure.

These departments are all subject to the President, and must carry out his orders. The executive power is vested in the President, and he is responsible for its exercise.

The names of these executive departments, and the titles of the head of each, are given in the following table, in the order of their precedence:

DEPARTMENTS.	CHIEFS.
Department of State	Secretary of State.
Treasury Department	Secretary of the Treasury.
Department of War	Secretary of War.
Department of the Navy	Secretary of the Navy.
Department of the Interior	Secretary of the Interior.
Post Office Department	Postmaster General.
Department of Justice	Attorney General.
Department of Agriculture	Secretary of Agriculture.

Several of these executive departments existed under the Confederation, in one form or another.

IV. The Cabinet.—President Washington began the practice of consulting the heads of departments, separately or together, orally or in writing, about all important matters, thus making an informal Cabinet. President Jefferson began the practice of holding regular Cabinet meetings, a practice which has been kept up by all Presidents since. This practice of holding Cabinet meetings, and of consulting with them on all important matters, is not binding on the President. He can do it or not, as he chooses. But it is so great a help to him in the management of his office, that it is not likely that any President will ever dispense with it.

A Cabinet meeting is not so much in the nature of a legislature as of a council of war. The President takes the opinions of his Cabinet, but he is not bound by them. Still, as they are his political friends, and generally his personal friends, a wise President is usually guided by them to a great extent.

The Cabinet meetings are usually secret. The consultations are not published. They are therefore much freer than they could be if they were public or were to be published. The things which the Cabinet advises the President to do are,

of course, known when he does them, and often are told to the public before they are put in action, though sometimes they are kept secret for a time.

V. Reports of heads of departments.—It has become the custom for the heads of departments and for the heads of important bureaus to prepare full reports to the President, which he transmits to Congress with his annual message.

The President sometimes calls for written reports or opinions at other times. The Attorney General, as the law officer of the government, is frequently called upon for an opinion in writing as to the lawfulness of certain courses of action. The reports or opinions in writing which the President can require must be upon a subject relating to the duties of the Secretary's office. Thus the President would call on the Secretary of State for an opinion upon our relations with any foreign power, or upon the Secretary of the Treasury for an opinion on a financial question, and so on.

VI. The pardoning power.—

The experience of the world has shown that in administering justice, mistakes are sometimes made. Innocent persons are sometimes convicted of crimes by mistake, or by false witnesses, and guilty persons are sometimes sentenced to a punishment more severe than they deserve. Sometimes, also, a crime cannot be proved against a number of guilty persons, except by the testimony of one of their number, which testimony will not be given unless the witness is assured that he will not be punished for his share in the crime. For these reasons, all governments have allowed a pardoning power, and have almost always placed this power in the hands of the executive.

The pardoning power is liable to great abuses. The

executive may refuse to pardon those who deserve to be pardoned, or he may encourage crime by pardoning great criminals. Our Presidents have been inclined to be too easy, rather than too severe, in the exercise of this power.

VII. Extent of the pardoning power.—1. The President may pardon before trial and conviction as well as after.

2. He may grant a conditional pardon.

3. He may commute a sentence to one less severe.

4. He may remit fines, penalties and forfeitures imposed under the revenue laws.

5. He may stop a criminal proceeding carried on in the name of the United States, at any stage of the process, and order the Attorney General or District Attorney to enter a *nolle prosequi*. *Nolle prosequi* is a Latin phrase, meaning *not to wish to prosecute*. The effect of entering a *nolle prosequi* is to stop the case and release the accused. But the accused may be prosecuted again for the same offense at some future time, which would not be the case if he had been acquitted by the verdict of a jury.

6. He can reprieve a condemned person; that is, suspend his punishment for a time. This power is rarely used except when a person is condemned to death.

7. He can issue a pardon to take effect at some future time.

8. His power extends to military as well as civil offenses.

VIII. Limitations on the pardoning power.—1. A pardon, reprieve or commutation must be accepted by the criminal, or it is void.

2. In cases of impeachment, the President has no official power. An impeachment is a political, and not a criminal, trial, and is directed against an executive or judicial officer for malfeasance in office. Besides, if the President were impeached, it would be obviously unfair to allow him to pardon himself. Or if an officer appointed by the President was

impeached for carrying out some ambitious design of the President, the President would be tempted to pardon him.

The President's power to pardon only extends to offenses against the United States. When offenses have been committed against a state, he has no power to pardon.

Clause 2.—Powers held Jointly with the Senate.

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 for such inferior officers as they may think proper in the President alone, in the courts of law, or in the heads of departments.

I. The treaty-making power.—

In monarchies the sovereign or his council have the sole power of making treaties and managing all the foreign relations of the government. It is necessary often to conduct negotiations with other governments with secrecy and dispatch, which could not be expected if the national legislature was to make treaties and manage foreign relations. But as this is a republic, the representatives of the people ought to have some voice in matters so important to the national welfare. Both objects are gained in our plan of making treaties. The negotiations preliminary to a treaty are conducted by the executive, as well as the ordinary correspondence with other governments. But no treaty is valid until the Senate, by a two-thirds majority, has assented to it.

The Senate has several times exercised its right of rejecting a treaty proposed by the President.

It is still an open question whether the President and Senate can make a treaty involving the payment of money without the consent of the House of Representatives. The President and Senate cannot compel the House to vote an appropriation with which to pay any sum promised in the treaty, but they can bind the honor of the nation to fulfill a contract lawfully made with a foreign power. In such cases the House has never refused to vote the appropriation, but has done it under protest. The House of Representatives claims that it ought not to be expected to vote money for an object about which it has not been consulted. The question is still undecided.

II. The appointing power.—

The rule in the United States service is that officers shall be appointed, not elected. Most state and county officers are now elected by the people; but at the time when the Constitution was adopted these officers were generally appointed. That is still the case in England. This Constitution follows the practice then prevalent.

It should be remembered that Senators and Representatives are not *officers* of the United States, but *representatives*—the Senators of the states, and the Representatives of the people. The only United States officers who are elected are President and Vice-President. All other officers of the United States are appointed in one way or another.

III. Appointments in concurrence with Senate.

All the principal appointed officers of the United

States are appointed by the President with the advice and consent of the Senate. For these officers the appointment of the President is either a mere nomination, or it is a temporary appointment. If the Senate is in session, an appointment by the President is only a nomination to the Senate. If the Senate refuses to confirm the nomination, the officer cannot be commissioned, and the President must appoint or nominate some one else, until he selects some one whom the Senate is willing to confirm. But in the recess of the Senate, the President can make a temporary appointment, which will hold good till the Senate meets. (See next clause.)

IV. The action of the Senate.—These appointments are considered by the Senate in secret session. They are usually referred to a committee, who inquire into them and report on some following day. Appointments by the President are often rejected by the Senate. There are only two cases in which the Senate is in the habit of confirming appointments at once without referring to a committee.

1. The President's Cabinet are almost invariably confirmed without hesitation, as a mark of courtesy to the President. The Cabinet are his advisers, and he ought not to be hampered in carrying out the duties of his office by being deprived of the men he wishes to have for his advisers, or by having men he does not wish forced upon him.

2. When a Senator, or a person who has been a Senator, is named by the President for an office, the Senate is in the habit of confirming the nomination at once, as a mark of courtesy to a colleague.

V. Executive sessions of the Senate.—When the Senate considers a treaty or an appointment, it goes into an "executive session." This is so called because the business then transacted is not properly legislative business, but executive

business. These sessions are always secret. No one is allowed to be present but the members and officers of the Senate, and these are all pledged to secrecy in regard to the debates. The action taken is of course necessarily made public at once, except sometimes in case of treaties. But the debates and votes are kept secret. This is to give greater freedom to Senators in speaking and voting than they would have if their action was made public. Appointments are confirmed by a simple majority, but treaties require a two-thirds majority.

VI. Appointments without the concurrence of the Senate.—

The Constitution provides that Congress may by law vest the appointment of inferior officers in the President alone, in the courts, or in the heads of departments.

This only applies to those inferior officers whose appointment is expressly given by law to one of those three powers. In all other cases, no matter how insignificant the office, the officer must be appointed by the President and Senate concurrently. The object of this is to avoid taking up the time of the Senate or of the President with the appointment of a multitude of petty officers; and also to allow certain officers to be appointed by those most interested in them.

Congress has exercised this right. The chief classes of inferior officers who are appointed thus are as follows:

1. All postmasters whose salaries are less than a thousand dollars a year are appointed by the Postmaster General.

2. Most of the clerks, messengers, etc., in the departments at Washington are appointed by the Secretary in whose department they are. The chiefs of the bureaus and a few of the most important officers in each department are appointed by the President with the consent of the Senate.

3. The clerks in the various custom houses are appointed by the Chief Collector in each custom house; and the clerks and letter carriers in each post office are appointed by the postmaster.

4. The clerks of the United States courts are appointed by the courts. In the cases of those inferior officers for whose appointment the concurrence of the Senate is not needed, it is also not needed for their removal. The same power which appoints can also remove.

VII. The tenure of office.—

This is now in nearly all cases, except judges and clerks of courts, and persons in the classified civil service, for four years unless sooner removed. Officers are frequently removed for political reasons, as well as for unfitness. Officers are also frequently reappointed at the end of their first term.

VIII. The classified civil service.—Owing to the abuses which came from appointments and removals of inferior officers for political reasons which had nothing to do with their efficiency, a change has been made in the method of their appointment. Nearly all the clerkships in the bureaus at Washington, and in the post offices and custom houses are now

in the classified civil service. Appointment is made to these places upon examination, promotion is made for merit, and removals can only be made for good cause. An opportunity is thus given to a young man or woman to get a permanent position under the government if he can show ability and efficiency, and the government has clerks selected for their intelligence and business capacity.

IX. Removals.—

The power to appoint, when unlimited, implies the power to remove. The question was settled in Washington's administration, that the President can remove all officers whom he can appoint, except judges, who hold for life. But no officer in the military or naval service of the United States can be dismissed from service in time of peace, except on the sentence of a court martial.

The President can suspend a civil officer until the close of the next session of the Senate, and make a temporary appointment in his place. (Clause 3.) If the Senate before the close of its session does not confirm the person or persons whom the President nominates for the vacancy, the old officer comes back again. But it should be noted that the President, if he is obstinate, can suspend him again and make another temporary appointment, and so on, till the Senate yields.

CLAUSE 3.—THE POWER TO APPOINT TEMPORARILY.

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.

Temporary appointments.—

The Constitution provides that appointments to office

(except some inferior ones) shall be by the joint action of the President and Senate. But the Senate is not always in session, and vacancies may occur when the Senate is not in session. The Constitution provides that in such cases the President alone may make an appointment to fill the vacancy. The officer so appointed holds only till the close of the next session of the Senate.

When a vacancy occurs during the recess of the Senate, the President may (1) leave the office vacant till the Senate meets, or (2) make a temporary appointment. In many cases he is obliged to do the latter, because the office must have some one in it, so that public business may go on. In other cases, it is better to wait till the Senate meets, and thus be sure that the President's choice meets with the approval of the Senate. This is the case with judges, and with officers of the army and navy in time of peace.

Vacancies may be caused by death, by resignation, or by removal. The President can make a vacancy in an office by removing the officer holding it, and then fill the vacancy with some one he prefers. This, of course, can only be done in those offices over which he has the power of removal.

If a vacancy occurs in a life office, such as a judge or officer of the army or navy, any appointment made by the President in the recess of the Senate could only be till the close of the next session of the Senate, and not for life. To make it for life, the Senate must confirm the appointment.

SECTION III.—OTHER SOLE POWERS OF THE PRESIDENT.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both houses or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all of the officers of the United States.

I. The President's message.—

The President sends to Congress at the beginning of each regular session a message which contains:

1. A general account of the doings of the executive during the year.

2. A summary of the reports of departments, which reports are published separately.

3. Suggestions and recommendations as to legislation needed.

The President also sends special messages whenever there is occasion for them, to give information or to make recommendations.

Washington and Adams followed the custom of the sovereigns of England, by going in person to deliver their messages, and by receiving a reply from each house; but Jefferson sent a written message, and did not expect a reply. This usage has been followed since.

Congress does not always follow the recommendations of the President.

II. The power to convene Congress.—

Congress meets regularly on the first Monday in December, and remains in session in the odd years until the fourth of March, and generally much longer in the even years. This is enough for all ordinary legislation. But occasionally there will come an extraordinary occasion when legislation is needed on some subject which cannot be put off till the regular session. Presidents have used their power to convene Congress in special session only a few times. These occasions were all extraordinary.

The President has frequently convened the Senate at the close of a regular session of Congress to consider appointments.

The President can only convene Congress at the capitol, if the capitol can be used. If the capitol should be captured by enemies, or a great pestilence or fire should make it uninhabitable, it would probably be in the power of the President to convene Congress at some other place, either at a regular or special session. But the case has never arisen since the Constitution was adopted.

When Congress is convened in special session, it is not confined to any special time. It can sit as long or as short a time as it pleases. Nor is it confined to any class of subjects. The President calls it together for special reasons, which he names in his proclamation or in his special message; but Congress is at liberty to consider any other subject, and generally takes that liberty. A special session only differs from a regular session in beginning at a different time.

After a Congress has once met and organized, it can adjourn to any future time, and thus make special sessions without any call of the President. But before a Congress has met, or if it has adjourned without determining on a special ses-

sion, it can only meet before the time of the next regular session by a call of the President.

III. The power to adjourn Congress.—

When the Senate and House of Representatives cannot agree as to the time of adjournment, the President may adjourn them to such time as he thinks proper. This cannot be construed to mean that he can adjourn them any longer than till the time for the next regular session, as that is fixed by law.

The case has never arisen in which both houses have disagreed as to the time of adjournment, and the President has never been called on to exercise this power. But the case might well arise when the value of this provision would be seen.

In England the sovereign can porogue, that is adjourn, Parliament at any time, and can even dissolve Parliament and order a new election. A Parliament in England never adjourns itself, but is always porogued by the sovereign when it has finished its work; and a Parliament rarely sits the full seven years for which it is elected without a dissolution.

IV. Reception of ambassadors.—

To receive an ambassador or other public minister is to formally recognize him as an ambassador. A foreign minister must present his credentials to the President at a formal audience, and be received, before he can perform any public act. The same thing is done by our ambassadors abroad.

The power to receive implies the power to refuse to receive, and the power to dismiss. The executive of any country may refuse to receive or may dismiss the

ambassador of another country on one of the following grounds:

1. If the nation he represents has not yet been recognized as a nation by the government to which he is accredited.

2. Often when the country he represents and the country to which he is accredited have a very serious quarrel, and always when they are at war.

3. When the ambassador is personally objectionable to the government to which he is accredited. In that case some other person will be sent in his place.

The act of receiving ambassadors is to nations what it is to individuals to be on calling terms, or on speaking terms, except that it is done by agents instead of in person.

This power of the President is one of great responsibility at times. When in consequence of civil war there are two rival governments in a foreign nation, the question which government we shall recognize is decided by the President, and this recognition might even sometimes involve us in war with the side which we did not recognize. Or if the President should dismiss the ambassador of some other country on account of a difference with that government, it might easily lead us into a war. We are favored by Providence by having the Atlantic between us and any formidable foe, so that the mistakes of our President are not so dangerous to us as they would be in another situation. We have also been fortunate in having Presidents who, with the advice of their Cabinets, have managed our foreign relations discreetly, whatever may be said of their home policy.

V. Execution of the laws.—

This is the most important duty of the President, and

of the executive officers under his direction. The President does not make or repeal the laws (except so far as his veto power extends). If he thinks a law a bad one, it is nevertheless his duty to enforce it until it is repealed. He can recommend its repeal by Congress, but he must enforce it until it is repealed.

If the President or any officer should enforce that as law which is not law, or should go beyond his powers or duties as given in the Constitution and statutes, anyone aggrieved by such action has a remedy in the courts, by some of the various writs used by the courts, and by a suit for damages, if any damages have been sustained. The President and all his subordinate officers are thus subject to the laws. They do not make the laws; Congress does that. They do not interpret the laws; the courts do that. But it is their duty to enforce the laws, and to enforce them in lawful ways.

If anyone violates the law, he can be arrested and tried, and punished. If anyone refuse to obey the law, the executive officers can compel him to obey it, either by citing him before the courts for trial and punishment, or, if necessary, by armed force.

The President cannot himself do all the work of enforcing the laws, but he can take care that the laws are faithfully executed. He frequently instructs the district attorneys and marshals as to suits or criminal cases in the courts, by which violations of law are punished. All executive officers of the United States act under his direction, and must obey his orders, or risk being removed from office. Thus he has ample power to see that the laws are enforced.

VI. Commissioning officers.—

When an officer is appointed, he receives a commission, signed by the President and certified by the great seal, which is affixed by the Secretary of State. An of-

ficer's term of office begins when the President signs his commission, whether the officer receives it or not. The following things are necessary to holding any office to which the President can appoint with the advice and consent of the Senate:

1. The President must nominate.
2. The Senate must confirm (except during their recess).
3. The President must commission.
4. The person appointed must accept.

Other officers only require to be appointed by the proper authority and to accept the appointment.

Under this clause the President might be required by law to commission officers appointed by the courts or by heads of departments, but this has not been required as yet by law.

SECTION IV.—IMPEACHMENT.

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.

I. Who can be impeached.—

Only civil officers of the United States can be impeached. Military and naval officers are not civil officers, and cannot be impeached; but they can be tried by court martial.

Senators and Representatives are not officers, but representatives of the states or the people; they can be ex-

pelled by the house to which they belong; but they cannot be removed by impeachment.

Judicial and executive officers (except military or naval) are civil officers within the meaning of this section, and can be removed from office by impeachment and conviction. Any officer who can be removed by the President or by other authority would usually be removed in this way, if he deserved it, rather than to wait for the slow process of an impeachment trial.

II. For what can officers be impeached?—

Not for their private conduct, but only for their official acts. For instance, an officer could not be impeached for drunkenness, unless it rendered him unfit to perform the duties of his office. The Constitution specifies three causes for impeachment:

1. Treason. As this is defined elsewhere in the Constitution, it consists in "levying war against the United States, or in adhering to their enemies, giving them aid and comfort."

2. Bribery—that is, receiving money or its equivalent for using their office to the advantage of some one. For instance, if a judge should take a present for deciding for one party to a suit rather than the other, that would be bribery. Or if a revenue officer should take money from an importer to let his goods pass the custom house with less than the legal duty, that would be bribery.

3. Other high crimes and misdemeanors. What these are is not defined, nor was it meant to be. Cases

will sometimes arise which cannot be included under any law previously enacted, and the Senate must exercise its own discretion as to what constitutes these high crimes and misdemeanors. It will be guided, however, largely by the precedents already made in impeachment trials in this country and England. (See comments on I, 2, 5, and I, 3, 6 and 7, for the action of the House of Representatives in impeaching and of the Senate in trying impeachments.)

III. A table of impeachment trials.—

The following is a table of impeachment trials before the United States Senate. This table, of course, does not include impeachment trials in the several states, of which there have been several.

When.	*Whom.*	*Why.*	*Result.*
1798....	Senator Blount....	Intrigues with Indian tribes.....	Case dismissed for want of jurisdiction.
1803....	Judge Pickering...	Intemperance and Insanity.....	Removed.
1804....	Judge Chase.....	Partiality and Injustice	Acquitted.
1830....	Judge Peck..	Abuse of Judicial Power	Acquitted.
1862....	Judge Humphries.	Treason.....	Removed and disqualified.
1868....	President Johnson.	Violation of Tenure of Office Act.....	Acquitted by one vote.
1876....	Secretary Belknap.	Accepting Bribes.....	Acquitted.

APPENDIX TO PART IV.

The state executives.—

The executive power in the state governments is vested in an officer who is called Governor. This name comes down from the old colonial days, when it was the title of the chief executive in each colony. During and soon after the Revolutionary War several states changed this title to that of President. But all now call their chief executive Governor. The next in rank is called Lieutenant-Governor, which was also a colonial title.

The Governor and Lieutenant-Governor can be compared with the President and the Vice-President in respect to their powers and duties, but not in the manner of their election.

In the colonies the Governor had been appointed, except in the charter colonies, where he was elected by the people. The early Revolutionary governments generally had the Governor elected by the legislature. This lasted in Virginia till 1832, and in South Carolina till after the Civil War. But the democratic movement which began with Jefferson and culminated with Jackson led to the states one by one, changing their constitutions in this and other respects. The Governor and Lieutenant-Governor in every state are now elected by the people. The only relics of the old practice left are that in some New England states, if no candidate has a majority of all the votes cast, the legislature proceeds

to elect one of the two highest candidates, and that in many states the legislature canvasses the returns for Governor and declares which candidate is elected.

The Lieutenant-Governor presides over the Senate and also acts as Governor during the temporary or permanent inability of the Governor to act. The most frequent cause of such inability is the absence of the Governor from the state, when the Lieutenant-Governor acts as Governor.

The heads of administrative departments in the early state governments were generally elected by the legislature. In some cases one or more of these is still so elected. But the general rule is now that the state officers shall be elected by the people. The administrative departments are thus made independent of the chief executive, contrary to the practice in the United States government. The elective state officers include in nearly every state a Secretary of State, a State Treasurer, and an Attorney General. Many states have such state officers as State Auditor, Superintendent of Public Instruction and Railroad Commissioner. It is very usual in addition to the chief administrative officers elected by the people to have several other administrative officers and boards appointed by the Governor and confirmed by the Senate. The variety of these is so great and the changes in them so frequent that a list of them cannot well be given here. And for practical purposes all that is necessary is to know your own state government. All the information needed for this pur-

pose can be obtained from the statutes of the state or in most states from the legislative manual.

WORK FOR THE STUDENT.

[See State Constitution and Statutes.]

1. For what term is the governor of your state elected?
2. When does the election occur? How are the votes canvassed, and the result declared?
3. What qualifications are required of voters?
4. What additional qualifications are required of the governor, if any?
5. When does his term of office begin?
6. What salary is paid the governor? Is that fixed by the Constitution?
7. Is there any limitation upon re-electing a governor? If so, what is it?
8. Is it the practice in your state to re-elect a governor for one additional term? Have any governors in your state served longer than two terms?
9. What oath of office is prescribed in your state Constitution? How does it differ from that in the United States Constitution?
10. What are the powers and duties of the governor of your state? How do they differ from those of the President of the United States?
11. In what particulars does the impeachment of a governor in your state differ from that of a President of the United States?
12. How is a vacancy created in the office of governor?
13. How is the vacancy filled, in case there is also a vacancy in the office of lieutenant governor?
14. What are the powers and duties of the lieutenant governor, and his salary?

15. Make a list of the elective state officers with term of office and salary of each.

16. Make a similar list of the appointed state officers.

17. Make a list of all the state boards with number of members, how appointed, term of office, and compensation of each.

18. State the principal powers and duties of each of these officers and boards.

NOMINATION OF PRESIDENT.

The change in method of nomination.—During the first half-century of the Constitution, candidates for President and Vice-President were usually put in nomination by caucuses of members of Congress of the respective parties, for whom the electors were expected to vote. The electors at that time were mostly chosen by the state legislatures. The democratic movement led by Jackson was opposed to both these methods, as being survivals of the aristocratic methods of English politics handed down from colonial times. Jackson himself was first nominated for President by a number of state legislatures in which his party had a majority. But a more democratic method of party organization was soon adopted in the form of conventions national, state, and local. This has now been the regular method of the party organization of all parties for more than two generations. The first party conventions were held in 1831 and 1832. The recent laws providing for the Australian ballot system, in a large number of states, have recognized the convention method of party government for all offices, while providing also for independent nominations.

The call for the convention.—The call for the convention is issued by the national committee of the party, who are called together for that purpose by their chairman, usually after consultation with the executive committee. The call specifies the time and place of the convention, and the number of

delegates to which each state and territory and the District of Columbia is entitled. The basis of representation has been previously settled for the committee either by party usage or by an express vote in the last previous national convention. This basis of representation might be an equal number to each state, but this method has rarely been followed. Or it may be a number in proportion to the Presidential electors to which each state is entitled, that is to the Senators and Representatives. On this plan, which has been quite largely followed, each state generally has twice as many delegates as it has Presidential electors, and each territory and the District of Columbia has two delegates. This plan is the usual one, and has the merit of simplicity and of being in proportion to the electoral vote, except as to the territories and the District of Columbia. The objection to it is that states whose electoral votes will not be given to the party have an equal vote in deciding the nomination with those states which are sure for the party and those which are doubtful, and that territories which have no electoral vote, yet have votes in the nomination, so that a candidate may be nominated by the votes of states and territories which cannot elect him, against the wish of the states which furnish the votes for the party. A third plan has therefore been strongly urged, and has been adopted by the Populist party, to give each state a vote according to the popular vote for the party candidates for Presidential electors at the last election. This gives the party in each state representation according to its own numbers, and not according to the total population.

The call is sent to each state and territorial committee, and these committees then call state and territorial conventions, giving the time and place, and the number of delegates each county is entitled to. There are two ways of selecting the delegates to the national convention: either the state convention selects them all, which is necessarily the case in small states consisting of only one Congressional district, or a part of the delegates are elected by the state convention and a part by Congressional district conventions. Supposing

that the state has ten Representatives in Congress, and, of course, two Senators, and that there are twice as many delegates to the national convention as there are Presidential electors: there would be four delegates at large to be elected by the state convention, and twenty district delegates, two to be elected by each district convention; and this would be so specified in the call by the state committee, who would call the state convention and arrange with the Congressional and district committees to call the district conventions. The selection of party candidates for Presidential electors follows the same course. They may be selected by the state Convention, or they may be selected one by each district convention and two by the state convention. The call will specify this. The county committees will call county conventions, giving the number of delegates to which each town, village, and ward of a city is entitled, and the town, village and ward committees will call caucuses or primary elections, as the case may be. Meanwhile all this will have been published in all the leading papers as news, and the calls will be printed in many party newspapers, thus giving due notice.

The preliminary caucuses and conventions.—The caucuses for the primary elections and the county conventions are held as already described. Where district conventions are called, they are also held, and if possible before the state convention.

Each state convention is composed of quite a large number of delegates, most of whom arrive one or two days in advance. Usually the state committee acts on the credentials of all delegates before the convention meets and makes out a roll of members. Sometimes, however, this is wholly left to the Committee on Credentials after the convention is assembled. In case of a contest, there is always an opportunity for an appeal from any decision of the state committee to a committee of the convention, and then to the convention itself. If the state convention chooses all the delegates to the national convention, there are caucuses held of the members

of the state convention from each Congressional district to recommend delegates and candidates for Presidential electors to the state convention, and such recommendations are almost always followed. Each of these caucuses is thus virtually a district convention. In any case district caucuses are held to agree on members of the various committees of the convention.

At the appointed hour the convention is called to order by the chairman of the state committee. In some cases he names the temporary chairman of the convention, and in some cases such chairman is voted for by the convention. The temporary chairman generally knows beforehand that he is to be selected, and is prepared with a speech for the occasion on the issues of the day. This speech is often a sort of platform for the party. He then appoints the Committees on Permanent Organization, on Credentials, and on Resolutions, as they have been arranged for, and a recess is then taken for several hours to allow the committees to meet. At the next session the Committee on Permanent Organization reports a list of officers, who are almost always elected. The election of delegates to the national convention then begins. There is often an exciting contest, especially over the delegates at large. Such delegates to the national convention and candidates for Presidential electors as have been chosen by district conventions are reported and all others are elected so as to make a complete list for the state. The Committee on Resolutions then reports a platform of principles, which is generally adopted without amendment, because the real contest over the platform, if there is one, has already been fought out in the committee.

The national convention.—The national convention is larger than any state convention, and is attended by throngs of visitors who go out of curiosity or to help their favorite candidates. It is necessarily held in a great city, for no small city could accommodate the crowds or provide a building large enough. Indeed, a special building is often put up for use of the convention, because no hall in the city will hold

the convention itself with even a small part of those who wish to look on. Delegates and visitors arrive days beforehand. Each state delegation has its headquarters, and each candidate has rooms open to all comers. For months the party newspapers have been discussing the candidates for the nomination, and the state delegates have been chosen largely with a view to their voting for one or another candidate. The organization of a national convention proceeds similarly to that of a state convention. A temporary chairman and temporary secretaries are chosen and committees are appointed. These committees usually consist each of one member from each state and territory, who is named by the delegation from that state or territory. All contests not previously settled by the national committee are referred to the Committee on Credentials. Then the Committee on Permanent Organization reports a permanent chairman and other officers, who are almost invariably elected by the convention. All contests are decided by the convention upon the report of the Committee on Credentials. Then names are presented of candidates for the nomination for President and speeches made in favor of each. The candidate is chosen by ballot. The ordinary method is to call the roll of states and territories, generally in alphabetical order, and the chairman of each delegation announces the vote of his delegation, the ballots having been cast and counted in each delegation by its own officers. For many years it was the custom in all parties that the vote of each state should be cast as a unit, according to the will of the majority of delegates from that state. But in the Republican party now it is the rule that the number of votes cast for each candidate in each state shall be announced and shall be separately counted in the aggregate result. Voting by states thus becomes only a method of balloting quickly, instead of a method of suppressing the votes of a minority in a state delegation. In case the vote is reported incorrectly, any delegate from the state has the privilege of challenging the vote of his state as announced and demanding a poll of the delegation. In this way the votes of a state delegation

may be scattered among several candidates, instead of being all given to the candidate who has the majority in the state delegation. For many years the Democratic party has had a rule for its national conventions that a two-thirds majority is required to nominate. This rule has prevented some men from securing the nomination, and the consequent election to the Presidency, who would otherwise have obtained it; but it prevents a bare majority nominating, perhaps not really representing a majority of the party, and perhaps under the unit rule not even a majority of the delegates. In other parties a majority is enough to nominate. Frequently many ballots are necessary, and the excitement is intense not only in the convention, but all over the country.

The candidate for Vice-President is then nominated, generally without much difficulty. The Committee on Resolutions then reports a platform of principles. Sometimes there is a great difference of opinion inside the party on some of these questions, and there is a serious contest over the platform, but usually all differences have been fought out in the Committee on Resolutions.

All this keeps the convention in session several days, perhaps even a week. The importance of the nomination and of the platform makes each of the great party conventions a center of interest to all the other parties as well as to its own members.

Part V.

Organization of the Judiciary.

Law is the deep, august foundation, whereon peace and justice rest.
On the rock primeval, hidden in the past its bases be,
Block by block the endeavoring ages built it up to what we see. —JAMES RUSSELL LOWELL.

"The Federal Court is the unique creation of the founders of the Constitution. The success of this experiment has blinded men to its novelty. There is no exact precedent for it either in the ancient or the modern world."—SIR HENRY MAINE.

"The usual remedies between nations, war and diplomacy, being precluded by the Federal Union, it is necessary that a judicial remedy should supply its place. The Supreme Court of the Federation dispenses international law, and is the first great example of what is one of the most prominent events of civilized society, a real international tribunal."—JOHN STUART MILL.

ARTICLE III.

SECTION I.

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.

I. The judicial department defines and applies the law.—

The third department of the government is the judicial department. As the legislative department *makes* the laws, and the executive department *enforces* them, so the judicial department *applies* and *interprets* the laws. It is the business of the judicial department, in any cases brought before it, to decide whether the law applies to those cases, and how far it applies to them.

Thus if a crime is committed, the criminal ought to be punished. But in doing this, each department of the government has its share. The legislative department has already made a law forbidding that crime, and affixing certain penalties for committing it; an executive officer arrests the criminal on a warrant issued by a judicial officer; after certain preliminaries, the accused is tried before a judge and jury, who are judicial officers. The question is, whether the accused is guilty of the crime charged, and whether that is a violation of law;

that is, whether the law with its penalties applies to this particular case. If it is proved that it does, then the criminal is handed over to some executive officer to be punished. Now although it is the business of the executive department of the government to enforce the law, no executive officer has a right to punish a criminal until he has been found guilty of some violation of law; that is, until the judicial department has decided that the law applies to this particular case.

So with civil suits. It is the business of the judicial department to decide, upon the proof shown in any case, how far the laws apply to the dispute between the parties to the suit. When that is decided, it is the duty of some executive officer to carry out the law as it has been applied to this case by the courts.

In thus applying the law to particular cases, it often becomes necessary to know just what the law is. Either the law is not worded clearly, or two laws conflict. It then becomes the duty of the courts to decide what the law really means, or which of the two laws is really law and which is not. In such cases the judicial department *defines* and *interprets* the law.

II. The constitutionality of laws.—

Here comes in the power of the courts to decide the constitutionality of laws. The highest law is the United States Constitution, and all United States and state laws must conform to it. If they conflict with it, they are null and void, and are no laws. If in any case which

comes before the courts a law or a part of a law is found to be in conflict with this Constitution, the courts decide that the law is unconstitutional, and therefore void. Such a decision by any court is entitled to respect unless the decision is reversed by a higher court. But when such a decision is made by the Supreme Court of the United States court, the highest of the land, it is regarded as settling the question that the law is unconstitutional.

It is a mistake to suppose that the Supreme Court is constantly deciding constitutional questions, and that all constitutional questions come at once before that court. Nothing comes before any court except in connection with an actual suit or trial. An unconstitutional law may stand for years before a case under it is carried up to the Supreme Court. Some things from their nature cannot be taken into court. And the courts always hesitate to decide a law to be unconstitutional, and only do so when the case is plain.

III. In what courts the judicial power is vested.

The judicial power of the United States is vested in one Supreme Court, and in such other courts as Congress may establish.

The number and manner of organization of the courts have been changed from time to time, and are now as follows:

1. The Supreme Court of the United States, composed of one Chief Justice and eight Associate Justices.

2. Circuit Courts of Appeals, nine in all, each composed of the Justice of the Supreme Court assigned to that circuit and the Circuit Judges of that circuit. In the absence of either of these, his place may be filled by a District Judge from some district within the circuit. Most cases can only be appealed from a District Court to a Circuit Court of Appeals. Only a few important classes of cases can be carried up to the Supreme Court.

3. United States Circuit Courts, nine in all, each composed of one Justice of the Supreme Court, one Circuit Judge, and one District Judge.

4. United States District Courts, each composed of one District Judge. At least one of these District Courts is located in each state, and in the larger states more than one.

Special Courts.—1. The Supreme Court of the District of Columbia, composed of a Chief Justice and four Associate Justices. Any one of these may hold a District Court for the District of Columbia with the same jurisdiction as other District Courts of the United States.

2. The Court of Claims, composed of a Chief Justice and four Associate Justices.

3. Territorial Courts. These are only United States courts in the sense in which territorial governors and other officers are United States officers. They are officers of the territory, appointed by the United States, while the infant state is still under guardianship, and give place to state officers as soon as the state is admitted.

Territorial judges are not appointed for life, but for four years, unless sooner removed or unless the state is sooner admitted to the Union.

IV. Officers of the courts.—

These courts, besides the judges, have the following officers:

1. Each court has a clerk, appointed by the court, and removable by it, who keeps all the records of the court, and prepares all documents issued by the court.

2. Each District Court has a marshal, who is the executive officer of the court, with the same powers as those exercised by sheriffs. He is appointed by the President, with the consent of the Senate, and is marshal for the Circuit Court whenever it sits in his district.

3. The Supreme Court and the Circuit Courts of Appeals have marshals appointed by the courts, and the Court of Claims has a bailiff, with the same duties as a marshal.

4. Each District Court has a district attorney, who represents the United States in the prosecution of all criminal cases, and is the lawyer for the United States in all civil suits to which the United States is a party. The district attorney is appointed by the President, with the consent of the Senate, and acts as United States attorney also in the Circuit Court, when held in his district. In the Supreme Court, the Attorney General of the United States, or one of his assistants, acts as United States attorney.

5. The Supreme Court has also a reporter, appointed by the Supreme Court, who prepares and publishes the official reports of all cases brought before it. The reports now fill many volumes.

V. Term of office of judges.—

The term of office of all United States judges is for life, or during good behavior. As the only legal way of determining that a judge has not behaved well is by impeachment, this practically means that United States judges hold office for life unless removed upon impeachment. Only two judges have thus been removed. A judge may, however, resign; and if he has served ten years, and is seventy years old, he will be paid his full salary for the remainder of his life.

The object of making judges hold office for life, is to make them independent in their decisions. A judge ought not to be influenced in his decisions by the fear of removal from office, or by the hope of reappointment or re-election.

VI. Salary of judges.—

The amount of the salaries of judges is left to Congress. But the Constitution provides that their salaries shall not be diminished. They may, however, be increased. The object of this is to make the judges independent of Congress.

If it ever should be thought best to decrease the salaries of the judges, or of any class of them, it could be done in regard to all judges thereafter to be appointed,

but the salaries of those then in office would not be changed. But Congress can raise the salary of all judges at any time, and has done so several times.

SECTION II.—JURISDICTION OF THE COURTS.

Clause 1.—Extent of Jurisdiction.

The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

This clause has been modified by the eleventh amendment, which reads as follows:

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.

I. Two classes of cases.—

The Supreme Court has said: "Jurisdiction is given to the courts of the United States in two classes of cases. In the first class their jurisdiction depends upon the CHARACTER OF THE CAUSE, whoever may be the parties. This class comprehends 'all cases in law and equity arising,' etc.; in the second class the jurisdiction depends entirely upon the *character of the parties.* In this class are comprehended 'controversies between,' etc.

If these be the parties, it is entirely unimportant what may be the subjects of the controversy."

II. Cases in law and equity.—

A *case* is an alleged state of facts, brought before a court in a legal way by some one who is aggrieved thereby. The courts can only act on cases. They cannot decide on legal questions, except as they are brought before them in actual cases, either as criminal trials or civil suits. Thus a legal question may be disputed a long time before it is settled by a judicial decision, because no case has been brought before the courts which involves that question.

There are questions in regard to the meaning of some clauses of the Constitution which have never been decided, because no case has arisen which brought them before the courts.

These words, "cases in law and equity," refer to distinctions made by English law, from which our law is derived. When the Constitution was adopted, there were four classes of courts in England, each having its own officers, its own methods of procedure, and its own system of law. These courts were called law courts, equity courts, admiralty courts, and ecclesiastical courts; and the law administered by each was called common law, equity, admiralty and maritime law, and canon law. As there was to be no state church in this country, canon law and ecclesiastical courts were needless, and are therefore not mentioned in this Constitution. The other three divisions of English law are named in this paragraph. This clause of the Constitution gives the United States courts all cases in admiralty or maritime law, and takes them away from the state courts. It also gives the United States courts a part of the cases which may arise in law or equity, and

leaves the rest of the cases in law and equity to the state courts.

Under the power given Congress to organize inferior courts, three sets of courts, for law, equity, and admiralty, might have been organized in imitation of the English courts. Congress did not do so. Only one set of courts was organized, and they were made courts of law, equity and admiralty alike. But the forms of procedure and the body of law remains different for each class of cases.

No brief definition can be given of the difference between law and equity. Two distinctions in the methods of procedure, however, can be easily remembered. There are no juries in equity cases, and there are no criminal trials.

III. The common law.—The common law of England, in its widest sense, is that body of customs, precedents and forms which had gradually grown up in the course of English history. These were law in the colonies as well as in the mother country. The colonists, in rebelling against the rule of England, did not wish to lose all that was valuable in the institutions of England. Just as their state and national governments were formed largely on the model of the English government, so the practice of their courts has been largely the same as the practice of the English courts. In the United States courts, and in most of the state courts, the English common law as it stood at the time of the Revolutionary War, and so far as it has not been repealed by our Constitution and statute laws, is held as good law to-day. A notable exception is the case of Louisiana, which we acquired from France, where the courts follow the forms and customs of French law.

IV. Cases under the Constitution, laws and treaties.—

It is plain that the United States courts should have jurisdiction of all cases arising under the laws of the United States. By Article VI, Clause 2, these are made

the supreme law of the land, and over-rule all state laws or constitutions when there is any conflict between them.

The United States courts are bound to maintain this supreme law of the land in any case brought before them.

It should be remembered that the subjects upon which the United States can make laws are limited by this Constitution. The United States has full jurisdiction only in the District of Columbia, in the territories, on the high seas, in the United States forts, arsenals, and dockyards, and on United States ships. Everywhere else its jurisdiction is limited. Thus, if a robbery is committed in any of the places named above, the person accused of it will be tried in the United States courts and by United States law; but if it is committed in the jurisdiction of a state, it will be tried before the courts and by the laws of that state. But robbery of the mail, although committed within a state, would be tried before a United States court and by United States laws, because the United States has jurisdiction over post offices and post roads.

Cases may arise under the Constitution, directly, where there is no United States statute law involved. Thus, the state of New Hampshire passed a law changing the charter of Dartmouth College. As the state courts refused to declare the law unconstitutional, the case was carried into the United States Supreme Court. The Supreme Court decided that the charter of a corporation is a contract between the state and the corporation, which cannot be changed without the consent of both parties. As the state law impaired the obligation of a contract (I, 10, 1), the Supreme Court decided it to be unconstitutional, and therefore null and void. This was a case under the United States Constitution.

Cases may also arise under treaties made with foreign powers. These treaties, while they last, are laws of the United States, and binding on every citizen. The punishment for violation of treaties necessarily belongs to the United

States courts. Under the Confederation, when we had no United States courts, these cases came before state courts, which generally failed to punish their violation. The consequence was, our reputation as a nation suffered, and we might easily have been involved in a war, because of neglect to compel our citizens to obey our own treaties.

V. Cases affecting ambassadors, etc.—

All cases affecting ambassadors, other public ministers, or consuls, are tried in the United States courts. These are officers of foreign nations, and the United States are bound to protect them and treat them according to the rules of international law. It is therefore necessary that all cases affecting them should be tried in the United States courts, not in state courts, as the United States is responsible for their treatment.

But not all cases affecting ambassadors can be tried by our courts, for, by the law of nations, ambassadors and other public ministers are not subject to the criminal or civil law of the country to which they are ambassadors, but are subject to the laws of their own country. Thus, if the English ambassador to this country should commit a crime, he could not be tried here, but our government would have to write a statement of the case to the English government, whereupon he would be recalled and tried in England under English laws. The same is true of civil suits. The ambassador of a foreign power cannot be sued in this country, but if he run in debt and refuse to pay, he must be sued in the country to which he belongs; which is generally impracticable. The family and officers and servants of an ambassador share in these privileges in a less degree. But consuls have no such privileges under the law of nations, except in heathen or Mohammedan countries.

VI. Cases of admiralty and maritime jurisdiction.—

These are cases arising on the high seas and navigable waters. It is a very difficult question to exactly define the limits of this kind of jurisdiction. The courts have not been able to do it, but have made many conflicting decisions in regard to the extent of maritime jurisdiction.

In general terms, we may say admiralty and maritime jurisdiction include—

1. All questions of prizes and captures at sea.

2. The trial of all crimes committed on the high seas or waters of the seas outside of any country, and of all offenses against the law of nations.

3. *All* cases involving damages done on the high seas, and *some* cases on waters of the sea where the tide ebbs and flows.

4. *Many* cases concerning contracts or claims for services or sales at sea or in foreign ports.

Most of the above classes of cases evidently belong to the United States courts, because states have no jurisdiction over them. (Sec. I, 8, 10, and 11.)

VII. Controversies to which the United States is a party.—

The United States may be a party to a controversy either—

1. *As prosecutor in a criminal case* arising under United States law. All such cases are prosecuted in the name and by the authority of the United States. The actual work of the prosecution is done by the Attorney General, or by the district attorney of the dis-

trict in which the case belongs. He may be assisted by other lawyers, if necessary.

2. *As plaintiff in a civil suit.* These are prosecuted when the United States has a legal claim against anyone.

In violations of the revenue, there may be both a criminal prosecution and a civil suit.

3. *As defendant in a civil suit.* If anyone has a claim against the United States, arising under a contract, which the proper officer refuses to pay, he may begin a suit in the Court of Claims, and in no other court. But if the case is decided against the United States, the claim cannot be paid until Congress makes an appropriation for it. (I, 9, 6.)

VIII. Controversies between two or more states.

It is evident that these controversies must be tried in the United States courts, unless they can be settled by arbitration. These suits must be begun in the Supreme Court.

No district or circuit court has jurisdiction in any case in which a state is a party. (See Clause 2.) When the Constitution was adopted, there were many unsettled controversies between states, especially in regard to territory. Before the Revolution, controversies between the colonies were heard before the king in council. During the Revolution, there was no tribunal to decide controversies between the states. The disputes between them in regard to land grants led to much

trouble and violence, and might easily have led to war between the states.

The Articles of Confederation provided for the trial of such controversies by commissioners. These commissioners acted really as arbitrators, but had no authority to enforce their decisions. The Supreme Court can now decide cases between states, with authority, and its decision is final, and must be obeyed.

IX. Controversies between a state and citizens of another state.—

Suits brought by a state against citizens of another state must be tried in the Supreme Court. Other United States courts have no jurisdiction. (Clause 2.) Citizens of one state cannot sue another state, except in the courts of that state. (Am. IX.)

X. Controversies between citizens of different states.—

A United States court will be likely to be more impartial than a state court in a suit between its own citizens and the citizens of another state. Controversies between citizens of different states are therefore tried in the United States courts.

But the law which regulates such cases is the law of the state in which the case occurs. Thus, if a citizen of Kansas owes a citizen of Missouri, the citizen of Missouri may sue in one of the United States district courts in Kansas. But that court will try the suit according to

the laws of Kansas, if he prefers that to the other state courts; and in levying an execution, the Kansas debtor would be entitled to the exemption provided by Kansas law. Congress cannot legislate, except for certain things, within the limits of a state. (I, 8.)

Therefore, when the United States courts take jurisdiction of controversies between citizens of different states, they do not take United States law, but state law, when the subject in dispute is not one of those covered by the powers of Congress.

A citizen of the United States is a citizen of the state in which he resides. (Am. XIV.) But a citizen of a territory, or of the District of Columbia, is not a citizen of any state, and is not included in this provision.

XI. Controversies about land grants of different states.—

Even in cases between citizens of the same state, when the controversy is respecting land claimed under grants from different states, the United States courts have jurisdiction. Thus all controversies respecting conflicting land grants go into the United States courts. In these cases, although the states are not, in form, parties to the suit, they are involved in it. When a state grants land to individuals, it guarantees the title to the land. If the title is not good, the state is bound in good faith to make the title good or pay damages. Every state is therefore interested in the titles to land it has granted, and all the more so because a single case will usually in-

volve the questions of law and fact on which the titles to many tracts of land depend.

XII. Conflicting claims of states to land.—The charters of several of the colonies and the grants to proprietors, given by different sovereigns of England, were generally drawn very loosely, and often overlapped one another. As the country settled, this led to controversies between the colonies, some of which had been settled by the king in council, and some of which were left undecided at the time of the Revolutionary War. The states had granted land under these conflicting claims to two or more sets of settlers, who fought it out in legal and illegal ways, as men will fight when the title to their homes is in question. The chief disputes in regard to territory and land grants made by states were:

1. The whole state of Vermont, which was claimed both by New Hampshire and New York.

2. A large part of western New York was claimed by Massachusetts, as well as by New York.

3. Northern Pennsylvania was claimed by Connecticut, as well as by Pennsylvania.

4. The Northwest Territory (Ohio, Indiana, Illinois, Michigan, and Wisconsin) was claimed by Virginia by right of conquest, and parts of it by other states under their charters.

Besides these, there were questions of the exact boundary line between almost all neighboring states. These questions were some of them settled just before the Constitution was adopted, and others afterwards. In general, we may say that men who had bought land and settled on it were secured in their titles to it, but only after a great deal of trouble; and that the state boundaries were settled as they now stand.

XIII. Controversies between a state, or the citizens thereof, and foreign states, citizens or subjects.—

All cases to which foreign states or their citizens or

subjects are parties come before the United States courts. It is the United States government which is held responsible for our treatment of foreigners. The United States ought therefore to have jurisdiction over cases in which foreigners are parties. But foreigners cannot sue a state in the United States courts. (Am. XI.)

Clause 2.—Original and Appellate Jurisdiction.

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.

I. Original jurisdiction of the Supreme Court.

When it is said that the Supreme Court has *original jurisdiction* in certain cases, it is meant that these cases must be begun in the Supreme Court. Other cases may reach the Supreme Court, but only when they have been tried in lower courts, and an appeal has been taken from their decisions to the Supreme Court.

The Supreme Court has original jurisdiction in two classes of cases only:

1. In all cases affecting ambassadors, other public ministers, and consuls.

2. In all cases where a state is a party.

In these cases original jurisdiction is given to the Supreme Court, not because the cases are always important, but because there are important parties to the suit.

II. When it is said that the Supreme Court has *appellate jurisdiction* in other cases, it is meant that other cases must be begun in some lower court, but may be taken to the Supreme Court on an appeal from the decisions of the lower courts. This appellate jurisdiction is to have such exceptions and be under such regulations as Congress shall make by law. (See page 236.)

CLAUSE 3.—TRIAL OF CRIMES.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

[See also Amendments V, VI, VII.]

I. Trial by jury.—

A jury consists of twelve men impartially chosen. All questions of fact in criminal trials are decided by the jury; and questions of law are decided by the judge, with some exceptions. No person can be convicted of any crime in a United States court unless a jury unanimously find him guilty. If the jury unanimously find him not guilty, he is released, and can never be tried again on that charge. If the jury disagree, a new trial must be had with a new jury.

It is required by Amendment VII, that in all suits at common law, where the amount is more than twenty dollars, the right of trial by jury shall be preserved. This does not include equity cases, or admiralty or maritime cases, which are not governed by the common law.

Cases of impeachment have already been provided

for. An impeachment trial is not a criminal trial, but a political proceeding to remove from office an unworthy officer. This does not prevent such an officer from being also tried in the courts for a crime, if he has committed one. Cases of impeachment are therefore not tried before a jury, but before the Senate sitting as a high court of impeachment.

A large part of all the cases which come before the district and circuit courts require the aid of a jury. A jury is thus a part of the judicial department, for the time being. This is one of the checks and balances of our Constitution, that judges shall not decide the plainer questions of fact, but that these are left to the judgment of twelve citizens, who are not lawyers.

II. Where trials are held.—

Criminal trials must be held in the state where the crime was committed. Each state has at least one district court, so that there is no difficulty to the United States. This provision is intended as a benefit to the accused. It leaves him nearer to his friends, makes it easier to procure his witnesses, lessens his expenses, and gives him the benefit of the natural prejudices of the jury for a citizen of their own state.

Where crimes are not committed in any state, they are tried in some specified court. When committed on the high seas, they are tried in the state where the vessel first arrives.

SECTION III.—TREASON.

Clause 1.—The Trial of Treason.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

I. Treason is the highest crime against society. It is an attempt to subvert the government, and it deserves severe punishment. But the history of England is full of instances of that being called treason which was not really treason; of innocent persons being convicted of treason, and of extreme and oppressive punishments for treason. To prevent such things in this country, this section was put into the Constitution.

Treason against the United States is defined to consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. These words are taken from an old English statute, passed five hundred years ago, which defines treason against the King of England, and which was in force at the time of the Revolution.

This is the famous statute 25 of Edward III, which defines treason to be—

"1. To compass or imagine the death of the King, Queen, or their eldest son and heir.

"2. To violate the King's wife, or his eldest daughter unmarried, or the wife of his eldest son and heir.

"3. To levy war against the King in his realm.

"4. To adhere to the King's enemies in the realm, by giving

them aid and comfort, or by sending them intelligence or provisions, or selling them arms.

"5. To slay the chancellor, treasurer, or the King's justice, while in their place administering justice."

Many other things were, at one time or another, made treason in England. Our Constitution adopts the third and fourth of the above only.

It is not treason to conspire against the United States, or to agree to levy war, any more than it is murder to conspire to commit murder. But it is a less crime. It is not until the war is actually levied that there can be treason. But as soon as a rebellion against the government or a war by a foreign power is actually begun, then any assistance given the enemy is treason. In time of war or rebellion we ought to be careful of our acts, that we do not aid the enemy indirectly. When the country is at war, she calls for the help of all her citizens, and at least demands that they shall not help her enemies.

II. The proof of treason.—

No person ought to be convicted of so great a crime as treason except on the clearest evidence. The Constitution, therefore, requires that the charge should be proved, either—

1. By the testimony of two witnesses to the same act. This act must be an overt act, that is an open act. These witnesses must testify to the same act; any number of witnesses each to a separate act are not allowed. This is to give an opportunity to compare the testimony together and to detect false swearing.

2. Or by a confession in open court. A confession in private may easily be misunderstood or misstated by the person to whom the confession was made. The con-

fession, therefore, must be made in open court. It would be sufficient for the accused to simply plead guilty at the trial to make it a confesson in open court.

Clause 2.— The English Punishment of Treason.

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

I. The reason for this clause.—

The punishment of treason under English law was very severe. The traitor was put to death in a barbarous manner; his whole property was confiscated, he was attainted, and this corruption of blood descended to his posterity so that no one could inherit from him or through him.

Such extreme and barbarous punishments are forever forbidden in the United States by the Constitution. Congress has declared the punishment of treason to be death by hanging. A less punishment may be inflicted, but not less than imprisonment for five years and a fine of ten thousand dollars.

The details of the death of a convicted traitor in England were:

1. He was drawn to the place of execution on a hurdle or sledge. In ancient times he was dragged on the ground.
2. He was hanged by the neck, but cut down before he was dead.
3. His heart and entrails were drawn out of his body while he was still alive, and burnt in his presence.
4. His head was cut off, and his body divided into four quarters, which were in ancient times stuck over the gateways of London or other cities.

The above-named punishments are commonly referred to as hanging, drawing and quartering. The king could commute this punishment to beheading. Women were only hanged.

II. Attainder of treason.—The conviction of treason under the common law of England involved *attainder*—that is, it tainted the person so convicted. Persons could also be attainted by a *bill of attainder* without a trial, which has the same effect. A conviction of treason of itself brought an attainder of treason on the person convicted. No bill of attainder was needed in such a case.

This attainder in either case worked corruption of blood and forfeiture. Any person attainted, by that fact became corrupt in blood, and forfeited all his property, titles, and honors.

The Constitution forbids bills of attainder, (I, 9, 3, and I, 10, 1,) so that no person can be attainted except by a regular trial, and then only for treason as defined in this section. But it does not abolish attainder of treason. It only limits its effects to the person thus attainted.

III. Corruption of blood.—Under the common law, corruption of blood follows from any attainder. "By corruption of blood all inheritable qualities are destroyed, so that an attainted person can neither inherit lands nor other hereditaments from his ancestors, nor retain those he is already in possession of, nor transmit them to any heir. And this destruction of all inheritable qualities is so complete that it obstructs all descents to his posterity, whenever they are obliged to derive a title through him to any estate of a remote ancestor. So that if a father commits treason, and is attainted and suffers death, and then the grandfather dies, his grandson cannot inherit any estate from his grandfather, for he must claim through his father, who could convey to him no inheritable blood. Thus the innocent are made the victims of a guilt in which they did not, and perhaps could not, participate, and the sin is visited upon remote genera-

tions." (Story on the Constitution, Sec. 1299.) This injustice of the English common law is forbidden by this clause.

IV. Forfeiture.—By the English common law, an attainder of treason worked not only corruption of blood, but also forfeiture; that is, a person convicted of treason forfeited all his property of every description, and all his titles and honors. Persons were often convicted of treason purposely to confiscate their property. "Rapacity has been thus stimulated to exert itself in the service of the most corrupt tyranny; and tyranny has been thus furnished with new opportunities of indulging its malignity and revenge, of gratifying its envy of the rich and good, and of increasing its means to reward favorites and secure retainers for the worst deeds." (Story on the Constitution, Sec. 1300.)

The Constitution limits this by providing that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. A conviction of treason in the United States does not of itself carry any corruption of blood or forfeiture. Treason can be punished in such way as is prescribed by law, like any other offense; but the common-law punishments of treason are abolished by the Constitution. If the Constitution had not abolished them, it might have been claimed that as the common law is in force in this country so far as it is not expressly repealed, that these common-law punishments for treason were in force in the United States.

V. Treason trials.—During and after the Revolutionary War many persons were attainted of treason against their states for acting with the royal troops. A large amount of property was confiscated, much of which was afterwards restored. This was before the adoption of this Constitution. Under the United States laws, no person has ever been convicted of treason. The two most famous cases were the trial of Aaron Burr and the case of Jefferson Davis.

Aaron Burr had been Vice-President of the United States, and had lacked only one vote in the House of Representatives of an election as President. Disappointed of his am-

bition to be President, he engaged in a scheme the object of which was supposed to be to set up an independent nation west of the Alleghany Mountains. But his scheme, whatever it was, was frustrated, and he was arrested and tried for treason in 1807. He was acquitted for lack of legal proof.

Jefferson Davis was elected president of the Southern Confederacy. When the civil war was closed by the victory of the Union arms, he was captured and held for trial. But his case was never brought to trial, and no one else was brought to trial for treason by the victorious government. No other nation ever went through a civil war without trials and punishments of treason.

APPENDIX TO PART V.

State judiciary systems—

In the states originally the courts were organized on the same general plan as the United States courts, the judges being appointed, not elected, and holding office for life or during good behavior. The intention of this was to make the courts independent interpreters of the law. But the democratic movement in the first half of the nineteenth century in many state governments led to the election of judges by the people for a term of years. The intention of this was to make the courts organs of the popular will, as the legislature and the executive and administrative departments had been made through a similar election by the people. As far as the courts were concerned, the change was not made in all states, and it is still a matter of discussion whether judges should be elected or appointed, and whether their term

of office should be for life or for a limited time. The term of office has usually been made long, especially for judges of the higher courts, and it is usual to re-elect or reappoint an acceptable judge. It is also quite generally the practice, where judges are elected, not to make their election a matter of partisan politics. The original practice was in many states for the legislature to appoint the judges as well as the state officers. In several of the states the judges are still appointed by the legislature.

In most states there is a supreme court having appellate jurisdiction, and circuit or district courts, having original jurisdiction. In some large states there are three classes of state courts instead of two. The higher courts usually consist of several judges, and the district or circuit courts of one judge. But in some states "side judges" are elected for the district courts, generally from persons not lawyers, who sit with the judge, and with him constitute the court.

Besides these state courts, there are the following local courts:

County courts, consisting of one judge, sometimes with only probate powers, and sometimes with additional powers almost up to those of a district court.

In cities there are municipal and police courts, and in some places the powers of such courts are exercised by mayors or recorders.

Justices of the peace are elected or appointed in each local subdivision of the county.

Juries are used in all courts in which common-law

cases are tried. Equity cases are tried before the judge alone. A jury in a court of record consists of twelve persons, but in a justice court or county court is usually of six. Appellate courts, such as state supreme courts, do not have juries, for the reason that juries do not decide questions of law, but of fact.

In the rare case where a question of fact comes up in an appellate court, it is sent down to a lower court to be tried before a jury in that court.

WORK FOR THE STUDENT.

[See State Constitution and Statutes.]

1. What courts are provided for in your state constitution?
2. What other courts, if any, have been created by statute?
3. What is the name of your highest court?
4. Of how many judges is it composed?
5. Are they elected or appointed, and if appointed, by whom?
6. What is their term of office?
7. What is the salary of each?
8. Where does this court hold its sessions?
9. Has your state any intermediate courts between the highest court and the district or circuit courts? If so, how are such courts organized?
10. How many district or circuit courts are there in your state?
11. How are the judges elected or appointed?
12. What is their term of office?
13. What is their salary?
14. Are there "side judges"?

15. Have you county courts, probate courts or municipal courts in each county or in some of the counties only?

16. How are such courts as you have of these kinds organized?

17. What are the general powers of such courts in your state?

18. How are justices of the peace elected or appointed in your state?

19. What special courts are there in cities in your state such as municipal courts, police courts, mayors' courts or recorders' courts?

20. If judges are elected in your state, when is the election held, at the general election, or at some other time?

Part VI.

Miscellaneous.

Here is the record of one century's harvest of Democracy:

1. The majority of the English-speaking race under one republican flag, at peace.
2. The nation which is pledged by act of both parties to offer amicable arbitration for the settlement of international disputes.
3. The nation which contains the smallest proportion of illiterates, the largest proportion of those who read and write.
4. The nation which spends least on war, and most upon education; which has the smallest army and navy, in proportion to its population and wealth, of any maritime power in the world.
5. The nation which provides most generously during their lives for every soldier and sailor injured in its cause, and for their widows and orphans.
6. The nation in which the rights of the minority and of property are most secure.
7. The nation whose flag, wherever it floats over sea and land, is the symbol and guarantor of the equality of the citizen.
8. The nation in whose Constitution no man suggests improvement; whose laws as they stand are satisfactory to all citizens.
9. The nation which has the ideal Second Chamber, the most august assembly in the world — the American Senate.
10. The nation whose Supreme Court is the envy of the ex-Prime Minister of the parent land.
11. The nation whose Constitution is "the most perfect piece of work ever struck off at one time by the mind and purpose of man," according to the present Prime Minister of the parent land.
12. The nation most profoundly conservative of what is good, yet based upon the political equality of the citizen.
13. The wealthiest nation in the world.
14. The nation first in public credit, and in payment of debt.
15. The greatest agricultural nation in the world.
16. The greatest manufacturing nation in the world.
17. The greatest mining nation in the world.

Many of these laurels have hitherto adorned the brow of Britain, but her child has wrested them from her.—ANDREW CARNEGIE, *in 1886, in his book entitled, Triumphant Democracy.*

ARTICLE IV.

RELATIONS OF THE STATES.

SECTION I.—STATE RECORDS.

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

I. The reason for this section.—

The laws and records of one nation are not accepted in the courts of another nation with full faith and credit, but only under certain limitations and conditions. But as we are one nation, and not a collection of nations, it is provided that the official records of one state shall have full faith and credit given them in every other state. These records are not to be treated as the records of a foreign state, but as the records of another part of the same nation.

II. The following documents are embraced in this statement:

1. *Public acts*—that is, the constitutions and statute laws of the states.

2. *Public records*—such as registration of deeds and wills, records of marriages, and journals of the legislature.

3. *Judicial proceedings*—that is, judgments, writs and processes of courts, and published reports of decisions.

SECTION II.—RELATIONS OF STATES TO THE INHABITANTS OF OTHER STATES.

Clause 1.—Privileges of Citizens.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Privileges of citizens of one state in any other state.—

As this is one nation, not a collection of nations, it is plain that intercourse between the states should be as free as possible. The Constitution provides that no state shall give its own citizens any special privileges over the citizens of sister states.

Thus the Supreme Court decided that a law of Maryland was unconstitutional, which imposed a license on all traveling salesmen who were not citizens of Maryland. If the law had imposed the license on all traveling salesmen, it would have been constitutional. But as it discriminated against citizens of other states, it violated this clause of the United States Constitution.

Clause 2.—Fugitive Criminals.

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.

I. Extradition laws.—

In ancient times, criminals who escaped into another country generally escaped punishment thereby. Civilized nations now generally give up escaped criminals to one another. This is done by virtue of special treaties,

called *extradition treaties.* Criminals are usually given up by one nation to another only for such crimes as are named in the treaties, and under the forms prescribed by them. But as a matter of courtesy, nations which have no extradition treaties with one another often give up each other's criminals.

As we are one nation, the extradition of criminals between the states is made to depend not upon treaties, but upon the Constitution. This provision has been made by act of Congress to apply to the territories and the District of Columbia as well as to the states.

In the case of a person accused of any crime against a state law, the usual rule in all the states is, that a warrant must first be made out for his arrest by some proper officer, based on probable evidence. These warrants are good only within the jurisdiction of the state. But the person to be arrested on the warrant may escape from the state, or he may escape from the officer after his arrest and get out of the state. In either case, there is just one course to pursue under this Constitution. The officer who has the warrant applies to the governor of his own state, who then issues a requisition upon the governor of the state to which the accused person has fled. Upon this requisition, the governor who receives it authorizes some officer of his own state to arrest the person called for in the requisition and hand him over to an officer from the state which demands him. In the case of a person convicted of a crime who escapes from prison, the course is the same.

II. Concurrent jurisdiction of states.—The jurisdiction of a state extends to the boundaries of the state, except where a lake or river lies in several states. In that case, they all have concurrent jurisdiction upon the lakes or river. That is, a crime committed on the lake or river may be tried in the courts of any of the states in which it partly lies. Thus, Lake

Michigan lies partly in Michigan, partly in Wisconsin, partly in Illinois, and partly in Indiana. A crime committed on the waters of Lake Michigan may be tried in the courts of Michigan, Wisconsin, Illinois, or Indiana, whichever is most convenient. All questions are thus avoided about the exact boundary line, which would be difficult to determine exactly on the water.

Clause 3.—Fugitive Slaves.

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.

I. This clause obsolete.—

The same principle applied to fugitive slaves as to fugitive criminals. As we are one nation, runaway slaves were not to gain their freedom by crossing the boundary line of any state. The free states were to respect the institution of slavery in the slave states. If a master carried his slaves to a free state, they became free; but if a slave ran away to a free state, he still remained a slave, and should be given up on demand.

All this was changed by the abolition of slavery. Under the thirteenth amendment, there can be now no slavery in any state, and consequently no fugitive slaves.

II. The persons included in the phrases, "persons held to service or labor," were:

1. Slaves, who were owned like cattle, and who were held to service for life, and their children after them. The student should notice here, as elsewhere in the original Constitution, the words *slave* and *slavery* are carefully avoided. The framers of the Constitution when drawing up a form of govern-

ment for a free nation were ashamed to confess in the same document the existence of slavery in the nation. They hoped it would soon be peacefully abolished.

2. Apprentices, who are boys bound out for a term of years to learn a trade. They are not slaves, but their masters have a right to their services during the time for which they are bound out. The old system of apprenticeship, however, has almost gone out of use.

3. Other persons bound out to service for a term of years. It was once common for persons to bind themselves out for a term of years, to secure a passage to this country. When they arrived, their services for that time were sold to anyone who would buy them. This practice has also passed away. In some states pauper children are still bound out till they become of age.

This clause would still apply to any persons of the second or third classes who ran away from one state to another. But as their numbers are very few, and as slavery has been abolished, this clause of the Constitution has lost its importance.

SECTION III.—NEW STATES AND TERRITORIES.

Clause 1.—Admission of New States.

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.

I. New states may be admitted.—

The United States of America here announces a new principle of national life. Nations before this had not been in the habit of admitting their dependencies, whether conquered provinces or colonies, to equal politi-

cal privileges. It was because Great Britain refused the colonies a representation in Parliament, and attempted to govern them without their consent, that they rebelled and made themselves into the United States. They now provided against repeating the mistake. New states may be admitted into the Union. When they shall be admitted, or under what conditions, is a matter left to the discretion of Congress. But when a state is admitted, it is entitled to all the privileges of any other state, as guaranteed by this Constitution.

II. The consent of states is required to change their boundaries.—

Congress may carve out states as it pleases from the territory outside of any state, but it cannot change the boundaries of a state without its consent.

1. No new state can be formed within the limits of another state without its consent. Maine, Kentucky, Tennessee and West Virginia were thus formed.

2. No new state can be formed by joining two or more states without the consent of all the states affected. No such case has occurred.

3. No new state can be formed from parts of other states without the consent of the states affected. Vermont was formed by land claimed by both New Hampshire and New York.

4. It is plainly implied, though not stated directly, that a part of one state cannot be taken from it and added to another state without the consent of both the

states. But disputes in relation to the boundary are settled by the Supreme Court (III, 2, 1-2). The consent of states is to be given by their legislatures, which represent the sovereign people of the states.

III. How states are admitted.—

The method of admitting states is not always the same; but the usual method is this: The legislature of a territory sends a memorial to Congress, asking to be admitted as a state. Congress passes an "enabling act," giving authority to call a convention. This convention frames a constitution, to be voted upon by the people. Congress then passes an act admitting the new state to the Union.

But Congress has several times refused to pass either the enabling act or the act admitting the state, and the people have several times voted down a constitution proposed by a convention. In either case, the territory fails at that time to become a state.

Congress has generally required a territory to have population enough to be fairly entitled to one Representative in Congress, before admitting it as a state. No territory which had so much population ever was long kept out of the Union.

Clause 2.—The Territories.

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

I. The power to acquire and dispose of territory.

The power to acquire territory or other property is not expressed in this Constitution. It does not need to be so expressed. This power is an attribute of sovereignty. If the United States is a nation, it can, of course, acquire and hold territory or other property.

Before the Constitution was adopted, the United States acquired territory from several states by the cession of their claims; and since the Constitution was adopted, the United States has trebled its territory by purchase and by conquest, by discovery and annexation. But the United States at that time had the great question of the Northwest Territory on its hands, which led to the Ordinance of 1787, adopted by Congress while the convention was in session, and which led also to this clause in the Constitution.

II. The power to dispose of territory or property is also an attribute of sovereignty. It would exist if it was not expressed in the Constitution. But this clause puts the power in the hands of Congress. Thus, Alaska was bought of Russia, under the general power of any nation to acquire and dispose of territory. It was therefore done by treaty, not by act of Congress. The President, with the consent of two-thirds of the Senate, bought Alaska. But if we should grow tired of our bargain and wish to sell Alaska again, an act of Congress would be needed to authorize the sale, under this clause. Otherwise it could be sold as it was bought, by the treaty-making power. So, also, ships of war, arms, clothing, etc., of which we had more than was needed at the close of the civil war, were sold under authority of an act of Congress. No territory of the United States has ever been sold to another nation. But Congress ceded that part of the District of Columbia south of the Potomac river back to Virginia under this clause.

III. The power to govern territory.—

The power to govern the territory it holds is also an attribute of a nation's sovereignty. Every nation has this right, subject to the limitation of treaties and constitutions. But this clause gives the power to govern the territory of the United States to Congress rather than to any other branch of the government.

Congress has generally acted in the relation of a state legislature, as well as of the national legislature, to the District of Columbia and to the unorganized territories of the United States, and has made all their laws. But in all the organized territories Congress has authorized the people to govern themselves, subject to the government of the United States.

Territorial legislatures are elected by the people; but the governor and judges are appointed by the President, with the consent of the Senate. In such case, Congress really governs indirectly. It delegates the actual work of governing to the territorial government, but it reserves the right to reverse their action, or even abolish their government, at any time. These territorial governments are very much like the colonial governments before the Revolution. The territories are really colonies of the United States, and are governed as such.

IV. No prejudice to state or United States claims.

It is provided that nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state. This was inserted to

satisfy some states whose claims to territory had not yet been settled. The conflicting claims of the states to territory west of the Alleghanies had nearly all been settled just before the Constitution was framed. But some of these claims still remained at that time unsettled. All these claims were finally settled peaceably.

V. Claims and cessions of territory by the states.—The original settlements of the English colonies were made along the Atlantic coast. The English crown claimed this territory by virtue of the discoveries of the Cabots, and other later explorers. The crown granted these lands to the companies and proprietors that settled them, with very little regard for geographical accuracy. Massachusetts, Connecticut, New York, Virginia, the two Carolinas, and Georgia, all had grants of the land within their present boundaries, but stretching westward to the "South Sea"—that is, the Pacific Ocean. The other six colonies had grants not quite so vague and extensive, but indefinite enough to give rise to many disputes about boundaries. If the student will refer to a historical map, he will see that the claims of Massachusetts overlapped the claims of New York; that the claims of Connecticut overlapped those of New York and Pennsylvania, and that the claims of the Carolinas and of Georgia were likely to conflict. Besides these, New York and New Hampshire each had a claim on what is now Vermont, by virtue of English charters, and almost every colony had an unsettled question of boundary with its neighbor.

When the Revolution made the colonies independent states, no power was left to settle these conflicting claims. To add to the confusion, Virginia, in 1777, sent an expedition under George Rogers Clarke, which captured the country between the Ohio, the lakes, and the Mississippi, from the English, and Virginia claimed this territory by right of conquest. It was certain that we should not have acquired this territory at the

close of the Revolution if Virginia had not conquered it, so that the claim of Virginia had a show of reason.

These claims were to two things—to jurisdiction and to the right of eminent domain over the soil; that is, each state claimed certain territory to govern, and also claimed all the land in it not held by private persons, with power to extinguish the Indian titles, and to give away or sell the land. On the strength of these claims, the states had sold land or given it away to Revolutionary soldiers. But the conflict of state claims produced a conflict of titles to land. Thus, Connecticut had sold lands in the Wyoming valley, in northeastern Pennsylvania, to settlers; but Pennsylvania claimed that territory, and also sold the same land. Thus there were two sets of proprietors of the land, the actual settlers from Connecticut and the speculators who had bought of Pennsylvania. The result was that the two states almost went to war. Again, New Hampshire sold lands in Vermont to her own citizens, who settled what was called "The New Hampshire Grants." New York claimed the territory, and tried to enforce the claim. The "Green Mountain Boys" organized and armed to resist the claim, and if the Revolution had not broken out there would have been a little war between the colony of New York and the settlers of Vermont. It is not to be wondered at that each state claimed all it could. But it was necessary to the peace and safety of the Union that these conflicting claims should be settled as soon as possible.

During the war, the state legislatures and Congress passed various resolutions. At last New York led the way in giving up her claims to the west for the general good in 1780, Virginia followed in 1784, Massachusetts in 1785, and Connecticut in 1786. All this was done before the Constitution was adopted. As soon as all the conflicting claims to the territory between the Ohio, the lakes and the Mississippi had been ceded to the United States, Congress passed the celebrated Ordinance of 1787, while the Constitutional Convention was in session, for the government of that territory, which has been the model for all territorial governments since. The con-

flicting claims of Massachusetts and Connecticut with New York and Pennsylvania were adjusted by arbitration.

New Hampshire and New York both gave up their claim to Vermont, and it was admitted to the Union in 1791. Virginia gave its consent to Kentucky being set off from her territory into a separate state in 1792, and North Carolina to Tennessee, becoming a separate state in 1796. Other cessions of western territory were made by South Carolina in 1790, and by Georgia in 1802. Thus all these conflicting claims were settled by peaceable means.

The United States in all these cases gained the entire jurisdiction of the territories ceded, but the title to the land was not all given to the United States. Most of the states kept a part of the land and granted it to their Revolutionary soldiers. So now when the United States erects a state out of its territory, it gives up such part of its jurisdiction as a state is entitled to under this Constitution, but it keeps its lands, unless it specially gives a part of them to the state.

VI. Territory since acquired.—The original limits of the United States were between the Atlantic, the Mississippi, and the boundary of Canada. But on the south, the United States did not touch the Gulf of Mexico. Spain held what is now Florida and a strip extending west to the Mississippi, and all west of that river.

In 1803 we purchased of France all of what was then called Louisiana. France had just acquired it from Spain by a secret treaty. Louisiana then included "the island and city of New Orleans," and all the valley of the Mississippi which lies west of that river, with some vague claim to the country west of the Rocky Mountains.

The coast of Oregon had been discovered by two trading ships from Boston in 1788, and the Columbia (or Oregon) river in 1792, by one of the same ships. In 1804, an exploring expedition under Lewis and Clark was sent across the country, which explored the valleys of the Missouri and of the Columbia. This was followed by settlement in 1811. We thus acquired Oregon by discovery, if we did not already have a title

to it by the purchase of Louisiana. We claimed as far north as the latitude of 54° 40′, and the English claimed all down to California. We finally compromised on the present boundary.

In 1819 we purchased Florida of Spain, after we had captured it in time of nominal peace by a series of filibustering operations. Texas revolted from Mexico in 1835, and declared its independence in 1836. It was independent for nine years, and in 1845 was annexed to the United States, at its own request. In this case, Texas retained the title to her soil, and was admitted at once as a state on the same footing as the other states.

At the close of the war with Mexico we gained, by a mixture of conquest and purchase, what was then called New Mexico and California, including all the territory westward to the Pacific and south of Oregon. The southern part of Arizona was added to this by purchase from Mexico in 1853; and lastly, in 1867, we purchased Alaska of Russia.

It should be remembered that in acquiring all this territory we acquired rights of sovereignty only. The title to the land has been purchased of the various Indian tribes, and a large part of the land thus acquired has been sold or given away to encourage settlement. And as fast as the territory has been settled sufficiently, it has been made first into organized territories, and then into states. It is not the policy of the United States to govern the territory it acquires as dependent provinces, but to erect it into free states as fast as it can wisely be done. It is the glory of the states of the Union that they are not jealous of admitting other states to their sisterhood. Already the center of population and of power has passed to the westward of the Atlantic states. The new states which have been erected out of the territory of the United States already surpass the original thirteen states in number, in size, in population, and in wealth.

SECTION IV.—FEDERAL PROTECTION OF STATES.

The United States shall guaranty 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.

I. Guaranty of a republican form of government.

The Constitution provides that the United States shall guarantee to every state in this Union a republican form of government. This means that no state government shall be a monarchy or an aristocracy. States have had various details of government in their constitutions, and no attempt has ever been made to interfere with them on the ground that they are not republican. But should a tyrant ever usurp power in a state, or a few men, not the lawful choice of the people, ever seize on the government of a state, then it would be the duty of the United States to step in and overthrow the unrepublican government and call on the people to organize a more suitable one. Congress alone could do this, and the President could only act as authorized and directed by Congress in such a case. Nor could the Supreme Court have any jurisdiction in such a case. The question would be purely a political one, and therefore wholly beyond their jurisdiction. Congress alone can decide when a state no longer has a republican form of government, and how such a government shall be guaranteed to it.

Fortunately no such case has ever arisen, and the whole history of our states shows a constant tendency

toward a more republican rather than a less republican form of government.

II. Protection against invasion.—

The United States is required to protect every state in the Union against invasion. Even if this clause did not expressly state this, it would be the duty of the government to protect the states against invasion. It is one of the greatest things for which governments are organized, to protect against foreign invasion; and if nothing were said about it in the Constitution, it would still be the duty of government.

Besides, the preamble of the Constitution gives, among the objects of this Constitution, "to provide for the common defense," and this would include defense against invasion.

What department of the government is intrusted with this power? The executive. The President generally, by his orders to the army and navy, defends the whole United States against invasion. But in sudden danger, the officer of the army or navy who is in command at the point of danger does all he can until he hears from the President.

III. Protection against domestic violence.—

The Constitution also guarantees every state in the Union protection against domestic violence. But for fear that the federal government might make riots or local insurrections a pretext to meddle too much with state

affairs, it is provided that this protection shall only be given on the application of the proper state authority. This is the state legislature, or the governor if the legislature is not in session or cannot be convened.

The President can only interfere to put down an insurrection in a state when he is properly summoned, and it is fair to infer that his interference can only last until the domestic violence is suppressed, and that he must then cease his protection.

Several cases have arisen of domestic violence in a state, and the federal power has been found most useful to protect against riot and insurrection.

IV. Rival state governments.—But the most delicate case is that which has several times occurred, when there are two rival governments, each claiming to be the lawful one, and one or both appealing to the President for help against the other. In such cases, who shall decide which is the lawful government? This case differs decidedly from the case of a riot or insurrection, where there is no pretense of legality. When two rival governments exist in a state, and one calls for aid against the other, the President must know which is the lawful government before he can help either. His help will be the practical decision as to which shall be the government of the state, and will decide the question of fact, if not of law.

The answer is that in such a case, if Congress has recognized either government, the President is bound to follow that decision. But if not, then the President must decide to the best of his ability. But Congress may at any time reverse that decision and direct a change of policy.

ARTICLE V.

AMENDMENTS.

The world advances, and in time outgrows
The laws that in our fathers' day were best.
—LOWELL.

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

I. The method of making amendments.—

Amendments to the Constitution may be made in four different ways. In actual practice only one method has been used. Congress has several times proposed amendments by a two-thirds vote of each house, which have been ratified by three-fourths of the state legislatures.

The three other possible methods of amending the Constitution are:

1. Congress by a two-thirds vote of each house may propose the amendment, and may submit it to a convention in each state. If conventions in three-fourths of the states ratify the proposed amendment, it is adopted.

2. The legislatures of two-thirds of the states may apply for a constitutional convention, in which case Congress must call one. Amendments proposed by such convention may be submitted by Congress to conventions in the several states. If conventions in three-fourths of the states ratify the proposed amendments, they are adopted. This method is like the method by which the Constitution was adopted in the first place.

3. Or, Congress may submit the results of a constitutional convention to the state legislatures.

In any case, the consent of three-fourths of the states is required.

II. Restrictions on the power to amend.—

Three restrictions are provided for, of which only one now remains in force. The equal representation of the states in the Senate cannot constitutionally be changed. The number of Senators from each state may be changed, but there must always be the same number from each state. This is in the interest of the small states still, as much as it was at first.

In the interest of some of the slave states, it was provided that the slave trade should not be abolished before 1808.

And in the interest of all the slave states, it was also provided that slavery should not be taxed out of existence before the same date.

As 1808 is long passed and slavery has been abolished, these two provisions are now obsolete.

III. Disputed questions.—1. *Is the approval of the President necessary to a proposed amendment?* Both the Supreme Court and Congress have decided that it is not necessary.

2. *Can a state withdraw its ratification of an amendment?* Congress has decided that it cannot, and that if a state has once ratified an amendment, it cannot reverse that action. But if a state has rejected an amendment, it may afterwards adopt it and have its vote counted.

3. *When is an amendment, once proposed, dead?* This question has never been decided by authority.

4. *When does an amendment become valid?* When it is ratified by the requisite number of states. But it is the duty of the Secretary of State, as soon as he receives official notice from the requisite number of states, to publish the amendment, with his certificate that it is ratified.

IV. List of amendments proposed.—The following amendments have been proposed by Congress, the most of which have been adopted:

1. The first ten amendments were proposed in 1789, and ratified in 1791. These were designed as a Bill of Rights.

2. Two other amendments were proposed in 1789, but were not adopted. One of these was to regulate the number of Representatives. The other was to prevent members of Congress voting an increase of salary to themselves.

3. The Eleventh Amendment was proposed in 1794, and ratified in 1798.

4. The Twelfth Amendment was proposed in 1803, and ratified in 1804. This was proposed in consequence of the contested election in 1801.

5. An amendment to prohibit citizens of the United States receiving titles of nobility, presents or offices from foreign powers, was proposed in 1811, but not ratified.

6. An amendment to make slavery perpetual, in hopes of averting the civil war, was proposed in 1861, but was not ratified.

7. The Thirteenth Amendment was proposed in 1865, and ratified before the close of the same year.

8. The Fourteenth Amendment was proposed in 1866, and ratified in 1868.

9. The Fifteenth Amendment was proposed in 1869, and ratified in 1870.

NOTE.—Those amendments which were ratified will be found in full in their proper place. Those which were not ratified read as follows:

1. After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons. (Proposed in 1789.)

2. No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened. (Proposed in 1789.)

3. If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them or either of them. (Proposed in 1811.)

4. No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state. (Proposed in 1861.)

ARTICLE VI.

THE CONSTITUTION THE SUPREME LAW OF THE LAND.

CLAUSE 1.—DEBTS AND ENGAGEMENTS.

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.

All debts and engagements still valid.—

When a nation changes its form of government, it does not lose its identity and become another nation. It remains the same nation, with a different government. A change of government does not release a nation from the debts and engagements it has entered into. In such a case the law of nations requires the new government to assume the debts and fulfill the engagements of the old.

This would therefore have been the duty of the

United States whether the clause stating this had been inserted or not.

But it was inserted to show the world that we intended to pay our debts and to live up to our treaties. Of course all debts and engagements due *to* the United States are also equally binding.

Clause 2.—The Supreme Law of the Land.

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.

I. United States law the supreme law.—As we are one nation, and not a confederacy of nations, it is necessary that the national laws should be supreme over state laws. If not, we should have between forty and fifty supreme laws instead of one, and the laws of the United States would be obeyed only as far as it suited each state to obey them.

II. What is United States law?—United States law consists of three things:

1. The Constitution of the United States. This may be amended, but while in force is always the highest law for the United States and every state.

2. All laws of the United States made in pursuance of the Constitution. This includes all laws of the United States which are not unconstitutional. Only the courts can decide whether a law is constitutional or not, and until so decided as unconstitutional it must be obeyed as law.

3. All treaties made under the authority of the United States, that is by the President with the consent of two-

thirds of the Senate. When a treaty is made, it repeals all laws that are in conflict with it, as long as the treaty lasts. When the treaty expires, these laws come into force again.

These taken together constitute the supreme law of the land. They cease to be the supreme law in these cases:

1. When the Constitution is amended, the part abolished by the amendment ceases to be law.

2. When a statute is repealed by Congress, it ceases to be law.

3. When a statute is decided by the courts to be unconstitutional, it ceases to be law. If the decision of a lower court is thought to be wrong, the case may be carried up to the Supreme Court, whose decision is final.

4. When a law conflicts with a treaty made after the law was made, the law ceases to be law.

5. When a treaty is broken by mutual consent, is repudiated successfully by either party, or expires by its own limitation, it ceases to be law.

6. If a revolution should occur which should destroy our government, the Constitution and law would practically cease to be law.

III. State law as controlled by United States law.—

The law of each state consists of its constitution, and its laws made in pursuance thereof. If this law is in conflict with United States law, it is null and void. The states cannot nullify United States law, but the United States can nullify state law. But this can only be done within the limits fixed by the Constitution of the United States.

IV. State judges must decide accordingly.—

The Constitution makes every judge of a state court bound to follow United States law in preference to

state law. When they come in conflict, the state law must yield.

Clause 3.— Oath of Office.

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

I. Oath to support the Constitution.—

An oath to support the Constitution of the United States is required of all departments of the state and national governments. The persons required to take this oath are:

1. All Senators and Representatives in Congress.

2. All officers of the United States, executive and judicial. This includes military and naval officers.

3. All members of every state legislature in each branch.

4. All state officers, executive and judicial. This includes all county, town, village and city officers.

This oath of office must be taken in every case before entering upon the duties of the office.

The form of the oath in the United States is prescribed by Congress, except that of the President, which is prescribed by the Constitution. (II, 2, 7.)

The form of the oath in each state is prescribed by the states. All the states require also of their officers and legislators an oath to support the state constitution.

II. No religious test for office.—

In England, at the time this Constitution was adopted, no one could hold office who could not take a test oath which excluded all who were not members of the Church of England. A religious test was at that time required in many states of the Union, and still is in some.

This Constitution was in advance of the age in abolishing all religious tests for office. This is now generally acknowledged to be wise. We do not now ask of any person elected or appointed to any position, "What is your belief?" or, "To what religious body do you belong?" There is no legal hindrance to a person of any religion, or of no religion, holding office under the United States.

ARTICLE VII.

RATIFICATION OF THE CONSTITUTION.

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

I. The manner of ratification.—

The Constitution was to be submitted, not to the legislatures of the states, but to conventions elected for that purpose by the people of each state. When Congress called this constitutional convention which prepared this Constitution, it expressly provided that the work of the convention should be submitted to Congress and to the state legislatures for approval by them. But the con-

vention disregarded these instructions, and submitted their work to popular conventions in each state. This, however, was done in due form, by submitting the Constitution to Congress with the request that it be submitted to conventions called by the legislatures in each state, but elected by the people; and Congress did so submit it. The legislature of Rhode Island refused to call such a convention for several years, but did so in 1790. Rhode Island had constantly opposed the Constitution from the first, and had refused to send delegates to the convention which framed this Constitution.

2. Nine states were required to ratify the Constitution. This was two-thirds of the thirteen states. The Articles of Confederation required the consent of all the states to make any change valid. But if a unanimous vote had been required to adopt this Constitution in place of the Articles of Confederation, that vote could never have been secured. Rhode Island and North Carolina would have stood out, and thus defeated the Constitution. The framers of the Constitution knew this well, and therefore made this Constitution go into effect when a two-thirds majority should be secured. But in that case the Constitution was to be established only between the states ratifying it.

II. Disputed questions.—1. *As the Articles of Confederation required the consent of all the states to any amendment to them, by what right was this constitution adopted and carried into effect against the wish of two of them?* By the right of revolution; a peaceable revolution, it is true, but none the less a revolu-

tion. It is to the honor of the American people that they were able to accomplish such a revolution and establish a new form of government by peaceful discussion, without the use of force. Such a thing has rarely been done in the history of the world.

2. *What would have been done if North Carolina and Rhode Island had stood out and refused to ratify the Constitution?* They would have been compelled to ratify it. The other states would never have allowed them to exist as independent nations within the limits of the United States. As it was, Congress passed an act laying a heavy tonnage duty on foreign vessels, but suspended it temporarily for Rhode Island and North Carolina vessels. North Carolina yielded and ratified the Constitution. A year later the Senate passed a bill prohibiting all commerce with Rhode Island, and demanding of her a sum of money as her proportion of the expenses of the Revolutionary War. These were steps which could mean nothing but war; and Rhode Island so understood them. Rather than risk a war alone against the other twelve states, Rhode Island hastened to ratify the Constitution before the bill could pass the House of Representatives. Had Rhode Island not yielded in time, there can be no doubt that armed force would have been used to compel her.

3. *By what right could the United States have compelled reluctant states to assent to the Constitution?* By the right of self-preservation; the same right by which, at a later time, the United States coerced seceding states. The United States is a nation, and as a nation it has the inherent right to do whatever is necessary for self-preservation. This right is not given by constitutions, and is superior to all constitutions. It is the inalienable right of a nation; and a nation which cannot or will not hold its several parts together and compel their obedience to the general good of the whole does not deserve to be called a nation.

Part VII.

Bill of Rights.

THE CURSE OF THE CHARTER-BREAKERS.

In Westminster's royal halls,
Robed in their pontificals,
England's ancient prelates stood
For the people's right and good.

Closed around the waiting crowd,
Dark and still, like winter's cloud,
King and council, lord and knight,
Squire and yeoman, stood in sight;

Stood to hear the priest rehearse,
In God's name, the church's curse,
By the tapers round them lit,
Slowly, sternly uttering it.

Right of voice in framing laws,
Right of peers to try each cause;
Peasant homestead, mean and small,
Sacred as the monarch's hall.

"Whoso lays his hand on these,
England's ancient liberties —
Whoso breaks, by word or deed,
England's vow at Runnymede —

"Be he prince or belted knight,
Whatsoe'er his rank or might,
If the highest, then the worst,
Let him live and die accursed.

"Thou who to thy church hast given
Keys alike of hell and heaven,
Make our word and witness sure,
Let the curse we speak endure!"

Silent, while that curse was said,
Every bare and listening head
Bowed in reverent awe, and then
All the people said, Amen!

Seven times the bells have tolled,
For the centuries gray and old,
Since that stoled and mitred band
Cursed the tyrants of their land;

Since the priesthood, like a tower,
Stood between the poor and power;
And the wronged and trodden down
Blessed the abbot's shaven crown.

—JOHN GREENLEAF WHITTIER.

Alluding to the curse of the charter-breakers, Penn says: "I am no Roman Catholic, and little value their other curses; yet I declare I would not for the world incur this curse, as every man deservedly doth who offers violence to the fundamental freedom thereby repeated and confirmed." (WILLIAM PENN, in his admirable political pamphlet, "England's Present Interest Considered.")

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

INTRODUCTORY.

I. The reasons for this Bill of Rights.—

A bill of rights is a statement of those rights of citizens on which the government ought not to encroach. Monarchies are liable to be arbitrary, and to have little regard for the rights of their subjects. In England the people secured themselves against the tyranny of the king and his officers by various laws. The first of these was the famous *Magna Charta*, or Great Charter, forced from King John in 1215, and the last was the Bill of Rights, passed by Parliament in 1689, just after the English Revolution. This Bill of Rights was claimed by the colonists as English subjects, until they became independent of the mother country. The state constitutions already adopted before the United States Constitution contained each a bill of rights.

II. The adoption of these amendments.—

One of the chief objections to the original Constitution of the United States was that it did not contain a bill of rights. True, there were several things in the Constitution which properly belong in a bill of rights. But it was claimed that there ought to be a complete bill of rights, covering many points not given in the Constitution.

As the states ratified the Constitution, several of them recommended that a bill of rights be added. When the First

Congress met, it took into consideration these requests, and prepared a list of amendments to form a bill of rights. The House of Representatives proposed seventeen amendments. The Senate only agreed to twelve of these, and the state legislatures only ratified ten. These ten now form the first ten amendments of the Constitution. They were declared in force December 15, 1791.

III. The need of a bill of rights.—

Under a monarchy a bill of rights is needed, but under a republic there is not so much need of it. Still, a bill of rights, even under a republic, can do no harm, and may sometimes do good. Undoubtedly the principles of this bill of rights would have been embodied in our laws, whether they were in our Constitution or not.

Yet the tyranny of a majority over a minority may be as unjust as the tyranny of a despot, although less likely to occur; and this bill of rights is a safeguard against such tyranny.

IV. The scope of this Bill of Rights.—

These amendments were intended as limitations upon the government of the United States, but not upon the state governments. Each of the state constitutions had a bill of rights, designed to protect individual citizens of those states from oppression by the state governments.

This bill of rights only extends so far as the civil and criminal jurisdiction of the United States goes. But that is of no consequence, because the state constitutions also guarantee nearly all these personal rights.

Cases may, however, arise in which this fact would be of consequence. Thus, the fifth amendment requires

the indictment of a grand jury to hold a person for trial, except in cases of court martial. But the state of Wisconsin has returned to the old English practice of a preliminary examination before a justice of the peace. In that state, persons are usually tried without the indictment of a grand jury; and yet the United States Constitution is not violated, because the first eleven amendments were not intended as limitations on the state governments, but on the United States government.

ARTICLE I.

FREEDOM OF RELIGION, OF SPEECH, AND OF ASSEMBLY.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

I. Freedom of religion.—

One of the worst oppressions of European governments has been their attempt to make the people all adopt the religion of the government. A large part of the early settlers of the country fled from Europe expressly to secure religious freedom.

And now, in organizing the government of a new nation, their descendants demanded that the Constitution should guarantee religious freedom.

The freedom guaranteed is not freedom *from* religion,

but freedom *of* religion. This country is a Christian country, in the sense that nearly all its inhabitants are Christians, but not in the sense that anyone is compelled to accept the Christian religion, or any particular form of it. Anyone can believe any religion, or no religion at all, and the law will not interfere with his faith or practice so long as he does not interfere with anyone's legal rights.

This religious freedom, however, does not mean that the government of the United States is irreligious. It only means that it forces no religion upon the people. Prayer is offered at the inauguration of a President; each house of Congress has its chaplain, and the daily sessions are opened with prayer. The army and navy have chaplains. The President annually recommends Thanksgiving day to be observed.

II. Freedom of speech and of the press.—

In most countries, to speak or write against the government is a great crime, and everyone has to be careful of what he says on political subjects. In this country there is a complete freedom of speech and of writing on political subjects, and on all other subjects so far as the rights of others are not interfered with.

The freedom of speech and of the press is limited by the rights of other people. We have no right, under the laws of the United States, to slander or libel, or to publish obscene books. But so far as our freedom does not injure others, we have a right to speak or write upon any subject.

III. Freedom of assembly and petition.—

The right of holding political meetings, and of sending petitions to Congress or to any officer of the government, is frequently exercised. Together with the freedom of speech and of the press, it enables the people to influence the government constantly, as well as by means of the elections. Despotic governments always forbid or discountenance efforts to express public opinion by petition or public meetings. The Constitution guarantees us the right to assemble for any political purpose, but it must be in a peaceable manner.

ARTICLE II.

THE RIGHT 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 shall not be infringed.

This provision is to secure the rights of citizens to bear arms, and to be trained in military exercises. Under it, Congress has power to make rules for the militia, but not to forbid the organization of the militia. Congress can only prescribe the methods under which they can organize (I, 8, 16).

Under the rules prescribed by the general government, the states have organized a National Guard on a uniform system. This militia is armed and drilled, and is frequently summoned to suppress mob violence, and may be called on to defend our country against foreign invasion.

ARTICLE III.

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.

Quartering soldiers in peace.—

To quarter soldiers, means to give them board and lodging. Strictly with soldiers, board is called *rations*, and lodging *quarters*. But actually, when soldiers are quartered in a house, they have to be fed as well as lodged. No one needs to be told how annoying this may be to families to have rude soldiers quartered upon them, nor how expensive it may become if long continued. In peace, under this article, soldiers cannot be quartered on the citizens without their consent, which is not generally given. The result is that soldiers in peace generally lodge in barracks built for them by the government, and are fed by government rations.

But in time of war, soldiers must be moved about from place to place so rapidly sometimes that this cannot be thus provided for. In summer, they can carry tents with them; but in winter, it may be necessary for them to be quartered upon the inhabitants. But this must be done, not arbitrarily, but according to law.

The "owner," whose consent must be obtained, is the person who lives there, whether he owns the house or not.

ARTICLE IV.

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 upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Unreasonable searches and seizures.—

The Constitution forbids arrests of persons, seizure of property or search of buildings without a legal warrant. And this warrant must name the particular place to be searched, or the particular persons to be seized. Thus, if property be stolen, neither the losers nor the officers can search a single house without a search-warrant; nor can they have a general warrant to search any house they please. The loser must make oath that he believes the goods are in such a place, and on that oath the search-warrant will be issued to search that place.

ARTICLE V.

RIGHTS OF ACCUSED PERSONS BEFORE TRIAL.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offense, to be twice

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

I. The object of this article.—

The object of this amendment is to secure accused persons every chance to prove their innocence. It is thought better that ten guilty persons should escape punishment than that one innocent person should be punished. Therefore every possible opportunity is given to an accused person in the ways provided in this amendment and in other ways.

II. Persons cannot be tried until indicted by a grand jury.—

A *capital* crime is one that may be punished by death. An *infamous* crime is one that may be punished by death or imprisonment. A grand jury makes a *presentment* against a person on their own motion, but they make an *indictment* upon the complaint of some one else. In either case they must have evidence enough to make it probable that the person presented or indicted is guilty of the crime with which he is charged. There must be some probable evidence against a person before he can be presented or indicted by a grand jury. The grand jury therefore prevents accusations being made that have nothing in them. It is an annoyance and disgrace and expense to be tried for crime, even if not found guilty. The grand jury therefore prevents persons being held for trial merely to persecute them.

III. Except under military law.—Armies cannot be governed by the slow processes of the courts. The army and navy regulations (I, 8, 14) require certain duties of soldiers and sailors, and prescribe certain punishments for the violations of these regulations. These punishments are administered by the officers, at once, or by courts martial. All soldiers and sailors in actual service are liable to be tried by this military law; and when the militia is called out in actual service, they also are subject to this military law. Soldiers are also responsible to the ordinary courts for any crime committed by them. In case of actual war or insurrection, martial law may be proclaimed in the country actually the theater of war. In that case the writ of *habeas corpus* is suspended (I, 9, 2), and citizens as well as soldiers may be tried and punished by court martial.

IV. Cannot be put in jeopardy twice for the same offense.—

No person can be tried twice for the same offense. But if the jury disagree, he can be tried before a new jury. That is not another trial, but the same one continued. If a verdict of "not guilty" is given by a jury, the case can never be tried again. But if a person is found "guilty" by a jury, he has the right to appeal the case to a higher court. In that case, if a new trial is granted, he is not put in jeopardy; for if the new trial were not granted he would be punished, but in the new trial he has a chance of being acquitted.

V. Cannot be compelled to be a witness against himself.—

No accused person can be compelled to be a witness *against* himself. And, as there is no object in making

him testify *for* himself, if he does not wish to, an accused person is not *obliged* to testify upon his trial at all. But if an accused person wishes to make any statements, or to testify on his trial, he has the right to do so.

VI. Cannot be deprived of life, liberty or property without due process of law.—

This means that the government of the United States cannot lawfully deprive any person of life, liberty or property without some lawful process. By the fourteenth amendment, the same thing is forbidden to the states. "Due process of law" means a trial before some regular court, or before a court martial in cases where a court martial has legal power. As this is only for soldiers and sailors while in service, or for persons near armies that are at war, "due process of law" means for almost all cases, a regular trial before a court of law. No person can be arbitrarily put to death or imprisoned or fined. It must be for some violation of law of which he has been duly convicted.

VII. Private property cannot be taken for public use without compensation.—

Cases often happen where private property is taken for public use. Thus, if the United States needs a certain piece of land for a fort or arsenal, the land will be taken whether the owner wishes to sell it or not. In such a case, if the price can be agreed upon between the owner and the government, it is paid; but if the owner asks more than the government is willing to pay, the case

is referred to a jury, who assess the value of the property, which is then paid.

In case of war, the army frequently seizes provisions or horses, or other property, to be used at once. The value of this is paid by the government, if it is taken from loyal citizens of the United States; but if taken from rebels or foreign enemies, the property seized is not paid for.

ARTICLE VI.

RIGHTS OF ACCUSED PERSONS ON TRIAL.

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

I. A speedy and public trial.—

When anyone is arrested on a criminal charge, he is held for trial, either in jail or on bail. It would be unjust to hold an accused person in jail for a long time. An accused person is therefore guaranteed a *speedy* trial. That will usually be at the next term of court. But an accused person often asks to have his trial put off for some reason. This request is generally granted. But if an accused person wishes a speedy trial, he can have it, under this article.

All criminal trials are *public*, to secure fairness in the trial. Records are kept by the clerk of the court; spectators are admitted, and newspapers often publish an account of the proceedings.

II. Trial by jury of the state and district.— It has already been provided (III, 2, 3) that all crimes shall be tried by jury, and in the state in which the crimes were committed. This amendment provides further, that the trial shall be in the district in which the crime was committed. As all the larger states are divided into two or more judicial districts, this restricts the court before which a crime can be tried to the district court for the particular district in which the crime was committed. This district cannot be created for the purpose of trying some one. It must have been previously ascertained by law.

The impartiality of the jury is secured (1) by care in selecting jurors, who, in the United States courts, are always men of character and position; (2) by giving both sides the privilege of challenging jurors, either for cause or peremptorily. If any cause is shown why a certain person would be prejudiced as a juror, he is challenged for cause, and his name withdrawn from the list. Each side can also challenge a certain number peremptorily, that is, without giving any reason.

A jury always consists of twelve persons, and their verdict must be unanimous. A grand jury consists of

from thirteen to twenty-four persons, and a majority can indict.

III. The right to know of what he is accused. The *warrant* on which a person is arrested, and the *indictment* on which he is held for trial, both state the offense with which he is charged, and the time and place of the offense. An accused person has the right to see both these writs, or certified copies of them. Knowing exactly of what he is accused, he has an opportunty to prepare his defense.

IV. The right to cross-examine the witnesses.— This article gives an accused person the right to be confronted with the witnesses against him. The object of this is to give him the right to cross-examine the witnesses. After they have told their story, he, or his lawyer for him, questions them closely, to make them contradict themselves or to bring out something in favor of the accused. By such an examination by both sides, the whole truth is much more likely to be brought out.

V. The right to subpœna witnesses.— The "compulsory process for obtaining witnesses" is called a *subpoena*. Any person who knows anything of his own knowledge about the case may be subpoenaed as a witness on one side or the other, and is thus obliged to appear and testify at the trial. The government already has the right to subpoena witnesses against an

accused person. By this article, the accused also has the right to subpoena witnesses in his favor.

VI. The right to have counsel.—

Any accused person may, if he choose, act as his own lawyer. But the technicalities of the law are so many that even an intelligent and careful person would better intrust his defense to a good lawyer, much more an ignorant or a timid person. If an accused person is not able to employ a lawyer, the judge will appoint a lawyer to defend the prisoner, and the government will pay him.

ARTICLE VII.

TRIAL BY JURY IN COMMON-LAW CASES.

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

I. The right of trial by jury in common-law cases.—

The right of trial by jury in criminal cases has already been guaranteed (III, 2, 3, and Am. VI). The same right is now guaranteed in common-law cases, where the value in controversy exceeds twenty dollars. Where the amount in controversy is smaller, it is not worth while to empanel a jury. The time and expense of a jury trial is considerable, and it is not fair to cause that

expense to the government, and that delay to more important cases, for the sake of a trifling suit.

II. Facts finally determined by a jury trial.— In the Constitution (III, 2, 3), the Supreme Court is given appellate jurisdiction both as to law and fact. This was meant to cover cases in equity, cases in admiralty, and maritime cases, all of which are tried by the court alone without a jury. But for fear it should be held to give the Supreme Court appellate jurisdiction in suits at law, both as to law and fact, this clause was added to the Bill of Rights.

The common law of England is that whole body of customs, precedents and forms which grew up in England in the course of English history. The American courts recognize this common law, so far as it is not abrogated by any express provision of this Constitution or of a statute. Under the common law all suits are tried before a judge and jury. The judge determines the law and the jury the facts of the case.

The rules of common law allow only one way of re-examining facts once tried by a jury, and that is by a new trial before the same court for good reasons. The law as applied to any case may be re-examined by a writ of error or an appeal to a higher court; but in such cases the verdict of the jury is held conclusive as to the facts.

ARTICLE VIII.

EXCESSIVE BAIL, FINES, AND PUNISHMENTS.

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

I. Excessive bail forbidden.— *Bail* is the security given that a person arrested for

any offense will appear in court and stand his trial when the time comes. When no bail is given, the accused person will be kept in jail till his trial; not to punish him, for he has not yet been convicted of any crime, but to make sure that he will be on hand to be tried. Bail is not allowed in capital cases, because a man who expects to be hung will be likely to forfeit any security in order to escape.

If excessive bail is required, the accused will not be able to furnish it, and it amounts to the same thing as to refuse to admit the prisoner to bail. What is excessive bail in any case, must be determined by the seriousness of the offense charged and the wealth of the prisoner or his friends.

II. Excessive fines forbidden.—

Many offenses are punished by fine alone, or by fine and imprisonment. If excessive fines are imposed, they may easily amount to confiscation of the prisoner's property. The punishment by fine is intended to be a light punishment for a light offense. But an excessive fine may be made a very heavy punishment. The laws regulate the amount of fines for those offenses which are finable.

III. Cruel and unusual punishments forbidden.

Cruel and unusual punishments are understood to mean such punishments as whipping, branding with a hot iron, maiming, torturing on the rack, burning at the stake, breaking on the wheel, drawing and quartering.

These were, until a century or two ago, inflicted everywhere, but have now been abolished in all civilized countries. These are forbidden by this article.

ARTICLE IX.

STRICT CONSTRUCTION OF PERSONAL RIGHTS.

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

It is impossible to enumerate fully all the personal rights which the tyranny of government might possibly violate, and certainly they are not all enumerated in the Constitution. For fear that it might be inferred that the government could infringe on any personal rights not expressly guarded by the Constitution, this article was inserted.

ARTICLE X.

LIMITED POWERS OF THE U. S. GOVERNMENT.

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.

I. The power given to the general government.

In the first Congress the motion was twice made to amend this article so that it should read, "The powers not *expressly* delegated to the United States by the Constitution," and was twice lost. It was pointed out by Madison then, that a government, to be a govern-

ment, must have *implied* as well as *express* powers; that it is impossible to foresee and name in a constitution all the cases which will arise; and this argument prevented this word being inserted.

Notwithstanding this fact, it has been the habit of lawyers and statesmen to quote this article with the word "expressly" inserted, the very thing which its authors purposely refused to do. Had this been made the reading of the Constitution, we could never have bought Louisiana or Florida or Alaska constitutionally; nor could we constitutionally have built a light-house or established the signal service. As it is, the United States has all the powers granted to it by this Constitution, and all other powers that are fairly implied in these. All other powers are prohibited to the United States government.

II. The reserved powers belong to the people, not to the states.—

Who has these reserved powers, then? The advocates of state rights say that all rights not expressly given to the United States are reserved for the states. We have already seen the falseness of that word "expressly." But are all the reserved powers given to the states? No. For in the first place we have certain powers expressly forbidden to the states (I, 10), some of which are also prohibited to the United States. And this article says that certain powers are reserved to the people. The advocates of a centralized government say that the government of the United States has all the powers needed for the general welfare, which is vague enough to allow any amendment of centralized power. Both claims are wrong.

The truth is that in this country the people are the source of all power. They have delegated certain powers expressed or implied to the United States government by this Constitution, certain others to the state governments, and have reserved the rest, not to be exercised by either till called for by the people. And, moreover, lest certain powers extremely liable to abuse should be exercised, they have expressly prohibited one or both governments from exercising them.

But it does not follow that the states, any more than the United States, can exercise any powers not expressly prohibited to them. All powers not given expressly or by fair implication to the United States government or to the several state governments are held in reserve by the people.

The people of the United States may grant additional powers to the general government, or take away some already granted, by an amendment to this Constitution. The people of any state may do the same with their state government, subject to the limitations of this Constitution.

Part VIII.

Later Amendments.

Whither leads the path
To ampler fates that leads?
Not down through flowery meads,
To reap an aftermath
Of youth's vainglorious weeds,
But up the steep, amid the wrath
And shock of deadly-hostile creeds,
Where the world's best hope and stay
By battle's flashes gropes a desperate way,
And every turf the fierce foot clings-to bleeds.
Peace hath her not ignoble wreath,
Ere yet the sharp, decisive word
Light the black lips of cannon, and the sword
Dreams in its easeful sheath;
But some day the live coal behind the thought,
Whether from Baäl's stone obscene,
Or from the shrine serene
Of God's pure altar brought,
Bursts up in flame; the war of tongue and pen
Learns with what deadly purpose it was fraught,
And, helpless in the fiery passion caught,
Shakes all the pillared state with shock of men:

—James Russell Lowell.

By the flow of the inland river,
Whence the fleets of iron have fled,
Where the blades of the grave-grass quiver,
Asleep are the ranks of the dead;
Under the sod and the dew,
Waiting the judgment day,
Under the one, the Blue,
Under the other, the Gray.

These in the robings of glory,
Those in the gloom of defeat;
All with the battle-blood gory,
In the dusk of eternity meet;
Under the sod and the dew,
Waiting the judgment day,
Under the laurel, the Blue,
Under the willow, the Gray.

So with an equal splendor—
The morning sun-rays fall,
With a touch impartially tender
On the blossoms blooming for all;
Under the sod and the dew,
Waiting the judgment day,
Broidered with gold, the Blue,
Mellow with gold, the Gray.

No more shall the war-cry sever;
Or the winding river be red:
They banish our anger forever,
When they garland the graves of our dead.
Under the sod and the dew,
Waiting the judgment day,
Love and tears for the Blue;
Tears and love for the Gray.

—Judge Francis M. Finch.

Soon after the First Congress had proposed and the state legislatures had ratified the first ten amendments as a Bill of Rights, two special occasions arose for additional amendments.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

At the close of the Revolutionary War, the states, as well as the United States, were burdened with the debts incurred in that struggle, and were scarcely able to pay them. Article III, Section 2, of the Constitution, gave the United States courts jurisdiction over controversies "between a state and citizens of another state." After a time suits were begun in the Supreme Court (III, 2, 2) by their creditors. The Supreme Court decided that, under the Constitution, a state could be sued for a debt the same as a private person. (Chisholm *vs.* Georgia.)

This had not been the understanding of this clause when the Constitution was adopted, and the decision was a surprise to the people of many states.

This decision led at once to this amendment, which cuts off all suits against a state by private individuals, those already begun as well as future suits. Most of

the states were not in a situation to pay their debts on demand, and this amendment operated as a stay-law, to give them time in which to pay their debts, as well as a bankrupt law for those which could never pay them.

This amendment was declared in force January 8, 1798.

The states were at once freed from the fear of any power which would compel them to pay their debts. A creditor of a state, like a creditor of the United States, must now depend upon the good faith of his debtor.

Although a state cannot be sued in the United States courts by a private person, the parts of the state, such as counties, towns, villages, or cities, can be sued, and are frequently sued, by private persons. If the creditor lives in the same state, he of course sues in the state courts. But if he does not live in the same state, he can sue in the United States courts.

ARTICLE XII.

THE ELECTION OF PRESIDENT.

The reason for this amendment.—

The disputed election of 1801 showed the dangers of the method of electing President and Vice-President under the Constitution as it then stood. The twelfth amendment was passed, making such changes as the experience of that election had shown to be necessary.

This amendment has already been treated of in another place as a substitute for Article II, Section 1, Clause 3, where the text is given. It was declared in force September 25, 1804.

ARTICLE XIII.

SLAVERY ABOLISHED.

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

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

One of the chief causes of the civil war was the "irrepressible conflict" between two social organizations so diverse as those of the free and of the slave states, bound together in one nation. Other causes may be found; such as the difference in climate, and therefore in the character of the inhabitants and in the nature of their industries; the difference of character and ideas between the first settlers of north and south; or the difference in regard to state rights. But whatever effects these had, all clustered around the institution of slavery, to attack or to defend it. Slavery was not the only cause of the difficulties between north and south, but it was certainly the chief *expression* of those difficulties. Without it, the war perhaps would never have come, and certainly not at the time and in the way it did. And thus slavery came to be popularly called the *cause* of the war. It was natural that when the war closed with the victory of the north that slavery should be abolished.

The form of the thirteenth amendment is taken from Article VI of the Ordinance of 1787, for the government of the Northwest Territory (now the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin). "Any place subject to their jurisdiction," includes not only the states, but also the territories, the District of Columbia, forts, arsenals and dockyards, United States vessels or naval stations owned by us in other parts of the world.

Congress would have power to enforce this article by appropriate legislation (I, 8, 18) without the power being expressly granted in this amendment, and this section which gives this power is therefore superfluous. The same thing can be said of the similar sections at the close of Articles XIV and XV. This amendment was declared in force December 18, 1865.

ARTICLE XIV.*

MISCELLANEOUS PROVISIONS RELATING TO THE CIVIL WAR.

SECTION 1.—CITIZENSHIP AND ITS PRIVILEGES.

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

I. Citizenship defined.—

The question of who are and who are not citizens had been left somewhat vague till this amendment was adopted. And the exact position of free negroes was in doubt. The thirteenth amendment had made all ne-

*This article was declared in force July 28, 1868.

groes *free persons*. This amendment now made them *citizens*. Hereafter there can be no question as to who are citizens of the United States.

A citizen is a member of the body politic.

All the citizens together make up the nation. All persons who are not citizens are aliens.

A common mistake is to suppose that citizens are the same as voters. As a fact, most citizens are not voters, and not all voters are citizens. Children are not voters, and women are not voters in most states, but women and children are citizens, if otherwise qualified. And in about half the states men can vote who are not citizens of the United States, but who have only declared their intention to become citizens. The student should carefully distinguish between citizens and voters.

By the fourteenth amendment citizenship is defined thus:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

The phrase, "and subject to the jurisdiction thereof," was meant to shut out from citizenship those Indians who obey their tribal customs instead of the laws of the United States.

There are thus two ways in which anyone may become a citizen:

1. By birthright.
2. By naturalization.

A nation is like a family in this respect, for there are

two ways in which a person may become a member of a given family—by birthright and by adoption. Naturalization makes anyone a citizen of a given nation in the same way in which adoption makes anyone a member of a given family. Citizens of the United States, then, may be either natural-born citizens or naturalized citizens.

II. Natural-born citizens.—This phrase is used in Article II, Section 1, where it is provided that the President of the United States shall be a natural-born citizen. A natural-born citizen is not necessarily a *native* of the United States. Members of Indian tribes are natives, but are not natural-born citizens. And there are some natural-born citizens who are not natives of the United States, but were born in other countries. There are two conditions required to make a natural-born citizen—parentage and place of birth. A child born of American parents in any place under American jurisdiction is unquestionably a natural-born American citizen. But where the parentage and birthplace do not agree, there is a case of doubtful citizenship which is decided by the choice of the person himself when he comes to years of manhood.

Any person born of an American father, in a place subject to the jurisdiction of a foreign nation, may be a natural-born American citizen if he claims that privilege when he arrives at the proper age. So, also, any person born of a foreign father in any place subject to the jurisdiction of the United States may be a natural-born American citizen if he choose. In these doubtful cases the person may choose the country of his father or the country of his birth. So that a person may be a *natural-born* citizen of the United States without being a *native* of the United States.

The places outside the United States which are subject to the jurisdiction of the United States are: (*a*) United States men-of-war anywhere; (*b*) ships bearing the American flag, while on the high seas, but not in a foreign port; (*c*) places

purchased for naval stations; (*d*) the houses in which American ambassadors in foreign lands reside. This extends also to the persons and families of these ambassadors and their subordinate officers. So that a child born to any of them in a foreign country is considered to be born under the jurisdiction of this country. This extends to consuls in heathen or Mohammedan lands, but not to consuls in Christian lands.

So also the children of foreign ambassadors or their subordinates born in this country are not natural-born citizens.

III. Naturalized citizens.—Persons have been naturalized in each of the following ways:

1. *Under the naturalization laws of the United States.* For this, two steps are necessary:

(*a*) The foreigner who wishes to be naturalized must "declare his intention to become a citizen of the United States." He can do this at any time after coming to this country, the very day he lands if he pleases. It must be before the clerk of some United States or state court, who gives him a certificate, which is popularly called his "first papers."

This declaration of intention is the first step to citizenship, and entitles the person taking it to certain privileges. It entitles him to protection in foreign countries. It entitles him to take up a homestead of 160 acres of land. It entitles him in many states to vote, if otherwise qualified, and to hold most offices.

(*b*) But in order to become a full citizen he must take another step, which can only be done during a term of some United States or state court, and in open court. Before taking this step, he must have resided in the United States five years, and it must be at least two years after he took out his first papers, and he must have sustained a good moral character during that time, and been "attached to the Constitution of the United States, and well disposed to the good order and happiness of the same."

All this having been satisfactorily proved, he renounces all allegiance to any foreign power, and swears allegiance to the United States, and receives a certificate of naturalization.

This completes his naturalization, and is popularly called "taking out his second papers." He is thus entitled to all the privileges of a citizen, except being elected President or Vice-President.

2. *By treaty or annexation.* When the United States annexed Texas, the citizens of that commonwealth were made citizens of the United States by the act of annexation by which Texas was made a state in the Union. The same was the case with every addition of territory made by treaty with France or Spain. Their free inhabitants, except wild Indians, became citizens at once.

3. *Members of Indian tribes* may be made citizens by act of Congress, on leaving their tribal relations and coming under the jurisdiction of the United States.

4. *Slaves are not citizens.* When the slaves in the south were freed, as the result of our civil war, the act that made them freemen made them citizens. But to make assurance doubly sure, the fourteenth amendment was passed, which made them citizens, if they were not already.

IV. Naturalization of women and children.—Women and children may be naturalized in the following manner:—

1. When a man is naturalized in any of the ways named above, it naturalizes his family also. The family which is naturalized consists of his wife, and his children who are under twenty-one years old, but not of other persons who may be living in the family. If a foreigner has declared his intention to become a citizen and dies before becoming a citizen, his widow and minor children may go on with the naturalization at the proper time, in his place.

2. If a foreigner comes to this country when he is under eighteen years of age, and resides here five years, he may take out his first and second papers at the same time; but he must be at least twenty-one, and must have resided here five years, when he is thus naturalized.

3. A woman who is over twenty-one, and who is not married at the time, may be naturalized on the same conditions and in the same way as a man. Several women have been thus

naturalized in order to take up and acquire titles to homesteads.

4. A woman not a citizen becomes a citizen on marrying a citizen, and a woman who is a citizen loses her citizenship on marryring an alien.

V. State citizenship.—

Any person who answers to the above definition of a citizen of the United States may become a citizen of any state by taking up his residence in it. But he cannot be a citizen of two states at the same time. Nor can he become a citizen of any state in any other way than by gaining a residence within its jurisdiction. Whether a person has his legal residence in one state or in another, is a question which is sometimes hard to decide. But once establish the residence in a particular state, and the citizenship in that state follows.

Not all citizens of the United States are citizens of any particular state. They may be residents of the District of Columbia or of a territory. Nor is it necessary that all citizens of a state should be citizens of the United States. Many states give the privilege of voting and holding office to persons who have merely declared their intention of becoming citizens. This makes them citizens of the state, but not of the United States. Thus we see that citizens of the United States and citizens of the several states are not necessarily the same. A person may be one of them without being both.

VI. Privileges and immunities of citizens.—

As the Supreme Court of the United States has refused to enumerate these privileges, we need not expect to be able to give them completely. But in general

terms we may say that citizens of the United States, as such, are entitled to the protection of the government in foreign lands, and to the equal benefits of the laws of the United States at home. Thus:

(*a*) A citizen of the United States is entitled to the protection of the United States against any unjust treatment by foreign governments.

(*b*) If he is of age, he may take up government land under the homestead act, on certain easy conditions, the chief of which is that he shall live on it five years, and thus have a farm given to him free. But a married woman cannot take up a homestead, because that would give two homesteads in the same family. An unmarried woman who is of age may take up a homestead on the same conditions as a man.

(*c*) He is entitled to the use of the post office, the navigable rivers and lakes, and the mining lands, on the same terms as other citizens.

(*d*) He is entitled to the equal protection of the laws of the United States, and also to equal punishment for violating those laws. It should be remembered that within the states, United States law has a limited scope only.

(*e*) He is entitled to hold any United States office for which he is legally qualified, and to which he has been regularly elected or appointed.

Under the fourteenth amendment, the privileges and immunities of citizens of the United States belong to all citizens of the United States, without regard to color, birthplace, religious opinions, party, sex, or age; and no state can infringe them lawfully.

VII. Protection to life, liberty and property.— Our twofold system of government, United States and state governments, limits the privileges of citizens of

the United States as such, and leaves a wide margin for oppression by the states within their own jurisdiction. This amendment, therefore, goes on to guarantee not only to the citizens of the United States, but to all persons, equal justice by the state governments. By this clause the United States guarantees to all persons within its borders, whether citizens or aliens, the inalienable rights named in the Declaration of Independence. "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Except in the case of the slaves, the practice of our government has been in accordance with these principles. The great argument against the Constitution, as it was prepared by the convention, was that it did not sufficiently secure these personal rights to life, liberty, and the pursuit of happiness. These rights were made perfectly secure by the first ten amendments, as against any oppressions of the United States government. And at last, after slavery was abolished, these rights are by this amendment secured as against the oppressions of the state governments, and thus the Constitution guarantees to every person within the reach of its authority the inalienable rights to life, liberty, and property, and to the equal protection of the laws. To the citizens of the United States, it guarantees this not only in this country, but in foreign lands, so far as the government has power to protect them; to foreigners, it guarantees them so long as they remain within the United States.

VIII. Disputed questions.—1. *Can a state have citizens who are not citizens of the United States*? This is left an open question by this section. It is probable, however, that a state has this power. Many states have made voters of a large number of foreigners who have only declared their intention to become citizens, and, if they are voters, they must of course be citizens of the states; and no act of any branch of the United States government has ever questioned this right of the states.

2. *What is the status of aliens who have declared their intention to become citizens*? They are not citizens, but they have taken the first step toward becoming citizens, and are therefore entitled to the protection of the government, but not to any of the special privileges of citizens. The government has several times protected them against injustice in foreign lands.

3. *Can a Chinamen be naturalized*? No, he cannot be naturalized, as the law now stands. White men and negroes may be, but not Chinamen. But the children of Chinamen born in this country are citizens under this article.

4. *How can an Indian become a citizen*? An Indian cannot be naturalized in the manner prescribed for foreigners. The practice has been to declare a tribe or a part of a tribe citizens by a special act of Congress, on their renouncing their tribal government. In some cases, tribes or parts of tribes have been again allowed, by act of Congress, to give up their citizenship and resume their tribal government.

5. *Does this section give women the right to vote*? No, it does declare them citizens, which they were before, but it does not make them voters. Citizenship and suffrage are not equivalent terms. But in any state women may be made voters, if the state chooses, without any violation of the United States Constitution. The Constitution does not make women voters, but it does not forbid the states making them voters.

SECTION 2.—SUFFRAGE.

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

I. Negro suffrage indirectly.—

One part of the fourteenth amendment is an attempt to secure indirectly that which was secured directly by the fifteenth amendment—negro suffrage. The effect of these provisions of this amendment would have been to put a powerful inducement before the southern states to give negroes the right to vote; and the result would undoubtedly have been that they would have gradually conceded that right to them. But as this is secured directly by the fifteenth amendment, we need only consider what effect this may have in the future.

II. The effect of this provision.—

The effect of this provision, as things now are, is as follows:

1. It changes the basis of representation from that given in Article I, Section 2, and makes it the whole population except uncivilized Indians. This had already been practically done by abolishing slavery.

2. It is assumed that manhood suffrage shall be the rule—that all citizens of the United States who are of the male sex and twenty-one years old are voters, unless specially disqualified.

3. It is established, that no state ought to abridge the right to vote for any cause except for participation in rebellion or other crime. And this extends to state elections as well as to United States elections.

4. The penalty for a state thus abridging the right to vote is, that it shall have its representation in Congress proportionately reduced. If a state chooses to take this penalty, it may abridge the right to vote in certain ways. No state has yet been deprived of a part of its representation under this section.

III. What powers over the suffrage are left to the several states.—

Assuming that manhood suffrage of citizens of the United States is the standard qualification for voting, the states may constitutionally increase the number of voters as much as they please; and they may reduce that number in the following ways:

1. They may shut out rebels from the right to vote. After the civil war, for some time in many of the southern states those who had aided in the rebellion were shut out from voting. But it was found impossible to disfranchise permanently the most intelligent and wealthy people of the south, and these restrictions have now all been removed.

2. They may disfranchise criminals. In every state

persons convicted of crimes are disfranchised; but they are frequently restored to their civil rights by a pardon.

3. They may require an educational qualification subject to the penalty of having their representation reduced. In a few states it is required of every voter that he be able to read and write; but in those states the number of illiterate persons is very small.

4. They may require a property qualification, subject to the penalty of losing a part of their representation in Congress. If a considerable amount of property were required for a voter, it would reduce the number of voters very much, because the mass of the voters are men who live by their labor, and have no great amount of property. It is safe to say that any considerable property qualification will never be required of voters while our present form of government lasts.

But many states require a small poll tax of each voter before he is allowed to vote. This is not a violation of this section, because no one is really prohibited from voting as long as the amount of tax is small.

SECTION III.—REBEL DISABILITIES.

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.

I. Political disabilities the only punishment of rebels in the civil war.—

The disability to hold office provided for in this section is the only punishment inflicted by the United States upon rebels in the civil war. Every person who had borne arms against the government, or who had given aid and comfort to the rebel army or government, was legally guilty of treason. (III, 3.) This made nearly every white man in the seceded states a traitor, and liable to punishment for his treason. But not a single person was ever brought to trial on that charge. The only punishment inflicted was that prescribed in this section.

II. The extent of these disabilities.—

The extent of these disabilities is limited:

1. Not all rebels are punished, but only those who had previously held a position under the United States or any state, in which they had sworn to support the Constitution of the United States. Rebellion alone was not punished, but only rebellion joined with violation of an official oath.

2. The punishment is only a disability to hold office. It is not death, or imprisonment, or fine, or even disfranchisement; but only that the guilty person shall not hold office.

3. These disabilities were only to last until Congress by a two-thirds vote of each house removed them. Within a very few years these disabilities were removed from nearly all; and now the persons from whom these

disabilities have been removed fill most of the positions to which the votes of the southern states can elect them in the state governments and in Congress.

No other government in the world was ever so lenient toward conquered rebels. It should be noted that this section applies to future rebellions as well as to the one that is past, and that Congress may not always be so lenient if a new rebellion should arise in any part of our land.

SECTION IV.—THE PUBLIC DEBT VERSUS THE REBEL DEBT.

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.

The reason of this section.—

War is an expensive luxury, and cannot be wholly paid for in cash. As carried on in modern times, a great war always causes a great public debt. Our civil war was carried on so long, and on such a scale, that great public debts were contracted by both sides.

No conquering power ever pays the debts of the beaten side, and certainly no government in the world ever paid the expenses incurred by rebels who were defeated. On the other hand, good faith to our creditors, and the desire to keep our credit good, would doubtless make us pay our national debt without any constitu-

tional guarantee. But to make assurance doubly sure, this provision was placed in the Constitution.

1. This section promises that the public debt of the United States shall never be legally questioned. In fact, we have been paying off our debts quite rapidly, and our credit is now equal to that of any nation in the world.

2. It prohibits the payment by the United States, or by any state, of any debt incurred in support of the rebellion.

3. It prohibits the payment, by either the United States or by any state, of any claim for the loss of slaves by the war, or by their being set free. The freedom of the slaves was a consequence of the civil war. Had they been freed by peaceful legislation, they would doubtless have been paid for. But they were freed in consequence of the war undertaken by their masters, and the government therefore refused to pay for them.

ARTICLE XV.*

NEGRO SUFFRAGE.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

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

The negro guaranteed the right of suffrage.— For fear that section 2 of the fourteenth amendment would not be enough to secure the negroes the right to

*This amendment was declared in force March 30, 1870.

vote, this fifteenth amendment also was passed, which expressly provides that no person shall be deprived by law of the right to vote merely because he is black or has been a slave. A property qualification or an educational qualification, upon all blacks and whites alike, would not be contrary to this article. Thus these three amendments each secure an essential right to the negro —the thirteenth, the right to *freedom*; the fourteenth, the right to *citizenship*; the fifteenth, the right to *vote*.

THE AMERICAN UNION.

I profess, sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that union we owe our safety at home, and our consideration and dignity abroad. It is to that union that we are chiefly indebted for whatever makes us most proud of our country. That union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finances, prostrate commerce, and ruined credit.

Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, personal happiness.

I have not allowed myself, sir, to look beyond the Union, to see what might lie hidden in the dark recesses behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counselor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that, in my day at least, that curtain may not rise. God grant that on my vision never may be opened what lies behind.

When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original luster, not a stripe erased or polluted, not a single star obscured—bearing for its motto no such miserable interrogatory as, What is all this worth? nor those other words of delusion and folly, Liberty first, and Union afterward; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and land and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and forever, one and inseparable!—DANIEL WEBSTER, in the United States Senate, in 1830.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

[With the exact spelling, punctuation and capitalization of the original.]

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

ARTICLE. I.

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

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

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

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. 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 entited to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

The House of Representatives shall chuse their Speaker and other officers; and shall have the sole Power of Impeachment.

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

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a citizen of the United States, and

who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

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

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

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

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

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

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

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

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

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

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

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

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

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

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with

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

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

SECTION. 8. The Congress shall have Power

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

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

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

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

To constitute Tribunals inferior to the supreme Court;

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

To declare War, grant letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

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

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

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

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

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

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

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be pro-

hibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

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

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

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

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

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

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

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

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

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

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

ARTICLE. II.

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

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

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority and have an equal number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on

the List the said House shall in like manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; a Quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

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

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

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

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

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

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

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

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

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

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

ARTICLE. III.

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

SECTION. 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States,—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same state claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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

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

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

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

ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

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

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

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

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

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

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

ARTICLE. V.

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

ARTICLE. VI.

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

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

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

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the Same.

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

Go WASHINGTON,
Presidt and deputy from Virginia

And 38 others, representing all the states except Rhode Island.

AMENDMENTS.

(ARTICLE I.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE II.)

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

(ARTICLE III.)

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

(ARTICLE IV.)

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

(ARTICLE V.)

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

(ARTICLE VI.)

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

(ARTICLE VII.)

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

(ARTICLE VIII.)

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

(ARTICLE IX.)

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

(ARTICLE X.)

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

(ARTICLE XI.)

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

(ARTICLE XII.)

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

(ARTICLE XIII.)

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

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

(ARTICLE XIV.)

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

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

SECT. 3. No person shall be a senator or representative in Congress, or elector of president or vice-president, or hold any office, civil or military, under the United States or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house remove such disability.

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

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

(ARTICLE XV.)

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

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

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AN EXPOSITION

OF THE

CONSTITUTION

OF THE

State of Wisconsin

BY

A. O. WRIGHT.

REVISED AND IMPROVED.

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WHAT CONSTITUTES A STATE?

What constitutes a state?
Not high-raised battlements or labored mound,
Thick wall or moated gate;
Not cities proud with spires and turrets crowned;
Not bays and broad-armed ports,
Where, laughing at the storm, rich navies ride,
Not starred and spangled courts,
Where low-browed baseness wafts perfume to pride.
No:—men, high-minded men,
With powers as far above dull brutes endued
In forest, brake or den,
As beasts excel cold rocks and brambles rude—
Men who their duties know,
But know their rights, and, knowing, dare maintain,
Prevent the long-aimed blow,
And crush the tyrant, while they rend the chain;
These constitute a state;
And sovereign law, that state's collected will,
O'er thrones and globes elate,
Sits empress, crowning good, repressing ill.

—Sir William Jones, from the Greek.

HISTORY.

This Constitution of Wisconsin is historically descended from the United States Constitution, which in turn owes its origin to the early state constitutions, to the colonial charters, and to the English Constitution.

Immediately upon its adoption the United States Constitution became the model for the state constitutions, but in one respect the state constitutions soon began to diverge from the model. The progress of democratic ideas caused a change in one state after another from the semi-aristocratic type of government in the earlier state constitutions and in the United States Constitution to a more democratic type. The right of suffrage was extended from the propertied classes so as to include all male citizens, and in several states also foreigners who had declared their intention to become citizens. Manhood suffrage took the place of property suffrage. Along with this went also the change from appointive to elective officers. All state and county and other local officers, including judges, were elected by the people instead of being appointed by the legislature or the governor. A third feature of this democratic movement was that voting was done by the secret ballot instead of *viva voce*, thus protecting the poor voter from undue influence.

The Wisconsin Constitution was adopted at a time when this democratic movement had already been carried into effect in a majority of the states and in all the newer states, so that there was no question about manhood suffrage, the ballot and election of all officers being made features of the state Constitution. Negro suffrage was left to be decided later. There were three great political issues on which national parties were divided at that time, slavery, banks and internal improvements. Wisconsin in her constitutional convention took a decided stand against slavery. This was in accordance with the Missouri Compromise, not then repealed, which divided the New West between slave states and free states according to their geographical location, making Wisconsin a free state, because north of 36° 30′. On the other two questions the Constitution shows plainly that a compromise was effected between the Whigs and Democrats.

One great question of that day, now settled in every state, was whether the state should adopt a system of free schools. After a spirited canvass before the people and in the convention the friends of free schools carried the day, and embodied in the Constitution a provision for free schools and also for a state university and for normal schools. This placed Wisconsin on what was then the most advanced ground for popular education.

The New York constitution of 1846 had just been adopted, embodying many of these changes and also

some provisions respecting landholding caused by the conflict in that state over colonial feudal tenures. This constitution had a great influence upon the Wisconsin Constitution, partly because so many settlers in Wisconsin had recently come from New York.

The question of the boundaries of the new state had been agitated while it was a territory. But the question was settled by Congress without regard to the wishes of Wisconsin. The boundary fixed by the Ordinance of 1787 for the fifth state to be formed out of the old Northwest Territory was all north of a line running due west from the southern extremity of Lake Michigan, and between the Mississippi and Lakes Michigan and Superior. But the earlier states secured slices of territory additional to those given by the Ordinance of 1787, leaving the only real question to be settled at this time that of the western boundary. Even in this, the request of Wisconsin embodied in the Constitution was unavailing, and the territory between the St. Croix and the Mississippi was also taken from the new state.

Two conventions were necessary, as the first Constitution was not satisfactory to the people in several points relating to the political issues of the day. The second constitutional convention avoided several of these questions by leaving them to be voted on separately.

THE CONSTITUTION OF WISCONSIN.

THE ENACTING CLAUSE.

We, the people of Wisconsin, grateful to Almighty God for our freedom; in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare; do establish this Constitution.

I. The source of these words.—

This enacting clause is plainly taken from the enacting clause in the United States Constitution, with some changes. Notice the order in which the objects of the Constitution are given: First *freedom*, then *government*, and then the two great ends of government, *domestic tranquility* and the *general welfare.*

II. The people the authors of this Constitution.

The people are the source of all political power in Wisconsin, and "the people of Wisconsin" establish this Constitution. Thus the very first words of the Constitution show the republican form of government in this state, which is guaranteed to all the states by the United States Constitution. This Constitution is not granted by a monarch who can take it away again when he pleases; nor is it established by a few nobles for their own benefit. Here, in America, we are all sovereigns,

and make laws and constitutions to suit ourselves. And, therefore, the enacting clause states that it is *the people* of Wisconsin who make this Constitution.

III. Thanks to Almighty God.—

It is very proper for the people of the state in framing the Constitution to express their thanks to God. This does not establish any religion, for this Constitution (Art. I, Secs. 18 and 19) guarantees complete freedom of religion. But it does mean this: That the people of Wisconsin believe in God and worship Him; and believe, moreover, that they owe their freedom to Him.

IV. The first object of this Constitution.—

The first and greatest object with Americans always is "to secure the blessings of freedom." And in accordance with this, the first article of our state Constitution is a declaration of rights, intended to secure the blessings of freedom to every person in Wisconsin, citizen or foreigner, of whatever color, race, age or sex. And then the Constitution goes on to arrange the machinery of government, so as to "insure domestic tranquility and promote the general welfare."

V. The second object of this Constitution.—

To secure the blessings of freedom, we need a settled government with good laws, justly carried out. It is not enough to be free; we must be protected in our freedom from being oppressed by any one else; and this can only be done by a regular and a just government.

Before this Constitution was adopted and the state admitted to the Union, the government of Wisconsin was territorial. It was a territory of the United States, and it was governed by the United States. The governor and judges of the territory were appointed by the President, and the laws passed by the territorial legislature could be overruled at any time by Congress, and, indeed, Congress could, if it pleased, have abolished the legislature altogether, and itself made laws for the territory. But when this Constitution was adopted and Congress had made the territory of Wisconsin a state, with this Constitution as its fundamental law, "a more perfect government" was formed. Within the limits fixed by the United States Constitution, the people of the state can now manage their government to suit themselves. The state government is "a more perfect government" than the territorial government was.

VI. The third object of this Constitution.—

A good government will "insure the domestic tranquility" by preventing riots and insurrections, by restraining crimes of every kind, and by defending the state against war or invasion. And these things the Constitution provides for.

VII. The fourth object of this Constitution.—

Besides these, a good government will "promote the general welfare" by promoting education, by fostering agriculture, manufactures and commerce, and by securing to every man, woman and child in the state, a fair chance in life. These things the Constitution provides for either directly or indirectly. And thus the Constitution fulfills the objects set forth in this enacting clause, as we shall see by the farther study of it.

VIII. The state and the nation.—

The state of Wisconsin is one of the states of the United States of America.

The name state is properly given only to an independent political community. It was properly applied to each of the thirteen original states before the adoption of the United States Constitution, because they were then in theory independent political communities united for mutual defense. But the name, having been once given, was preserved when the facts were changed. The United States is now a nation; and the state of Wisconsin is one of the political divisions of the United States, but is not an independent political community.

When the United States Constitution was adopted, the states gave up to the United States their independence, and all their powers as nations, and retained only the powers necessary for local self-government. In general terms, we may say that the relations of the state and United States governments are these:

The United States government has all the powers needed for national independence.

The state government has all the powers needed for local self-government.

The state of Wisconsin has therefore no powers which belong to nations as independent political bodies. The following points of subordination are distinctly specified in the United States Constitution:

I. The state can adopt no other form of government except the republican form. (U. S. Const., IV, 4.)

II. The state cannot change its boundaries, except by the consent of the United States. (U. S. Const., IV, 3, 1.)

III. All the state officials must take an oath to support the United States Constitution. (U. S. Const., VI, 3.)

IV. The supreme law of the land is the United States law, consisting of: (1) The Constitution of the United States. (2) All laws of the United States not unconstitutional. (3) All treaties made with foreign powers. All parts of the state Constitution and laws which conflict with the United States law are null and void. (U. S. Const., VI, 2.)

V. The state cannot have relations of peace or war with other nations.

1. It cannot leave the Union to join another nation. (U. S. Const., I, 10, 1.)

2. It cannot make treaties with other states or with foreign powers. (U. S. Const., I, 10, 2.)

3. It cannot make war, except when invaded, or in imminent danger. (U. S. Const., I, 10, 2.)

4. It cannot make war indirectly by sending out privateering vessels. (U. S. Const., I, 10, 1.)

5. It cannot prepare for war by keeping troops or ships, without the consent of Congress. (U. S. Const., I, 10, 3.)

VI. The state cannot control its commerce with other nations or with other states of the Union, in any of the following ways:

1. By levying duties or tonnage on that commerce. (U. S. Const., I, 10, 2.)

2. By coining money, issuing paper money, or making anything but gold or silver a legal tender. (U. S. Const., I, 10, 1.)

3. By impairing the obligation of contracts. (U. S. Const., I, 10, 1.)

VII. The state cannot infringe on the personal rights of its citizens or of others living within its jurisdiction, in either of these ways:

1. By depriving any person of life, liberty or property, without due process of law. (Amendment XIV to U. S. Const.)

2. By denying any one within its jurisdiction the equal protection of the laws. (Amendment XIV.)

3. By abridging the privileges or immunities of citizens of the United States. (Amendment XIV.)

4. By bills of attainder. (U. S. Const., I, 10, 1.)

5. By *ex post facto* laws. (U. S. Const., I, 10, 1.)

6. By creating a titled aristocracy. (U. S. Const., I, 10, 1.)

7. By establishing slavery or serfdom. (Amendment XIII to U. S. Const.)

VIII. The United States has decided, by the fourteenth amendment, who shall be citizens of this state. The state cannot deprive these citizens of their citizenship. But the state can make other persons citizens of the state, and has actually done so.

IX. The state can decide who of its citizens shall vote; but it cannot deny any one the privilege of voting because of his race or color. (Amendment XV to U. S. Const.)

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION I.— INALIENABLE RIGHTS.

All men are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness: To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

I. Definition of freedom.—

All men are born equally free and independent; but freedom and independence do not consist in having a voice in the government, but only in being justly ruled and protected by a government of our own choice; otherwise women and children might complain that they do

not share in the freedom of this country, because they do not vote.

Nor does freedom consist in doing as we please. Nobody does just as he pleases in any civilized community. We all must restrain some of our desires, or else encroach upon some one else's rights. Our liberty consists in doing as we please, so long as we do not interfere with some other person's liberty. We have not an absolute right to everything we choose, but we "have certain inherent rights."

II. Inherent rights.—

There are two kinds of rights, *inherent rights* and *conventional rights.* Inherent rights are those rights that belong to everybody everywhere, and which it is the business of the law always to secure. Conventional rights are those that are given by law or by custom that has the force of law; and since they are given by law, they can be repealed by law. Inherent rights can be taken away by law, unjustly; for laws are not always just. Conventional rights may justly be taken away by law; for what the law has given, the law can take away.

For instance, the right to vote is a conventional right. The Constitution, for various reasons forbids certain persons to vote—women, children, persons who have come into the state within a year, wild Indians, convicts, United States soldiers and sailors. These persons cannot complain that the principle stated in this section has been violated; for the right to vote is not an inherent, but a conventional right. The people of the state, should they see fit, can extend the right to vote to any or all of these classes; or, if they see fit, can still

further restrict the right to vote by shutting out other classes, and no one can reasonably complain. But if, because of the restriction or the extension of the suffrage, the inherent rights of any class are put in danger, they can rightfully complain; not because of that restriction or extension of the suffrage, but because of the consequences that flow from it in violation of their inherent rights.

Again, the right to hold property, subject to a reasonable taxation from the state, is an inherent right. The government has no right to take any one's property from him without paying him for it, or to let any one else take it from him at all without his consent. A man has always the right to his earnings; for it is with them that he buys the means of life and happiness, and it is the business of government to protect him in that right. But nobody has an *inherent right* to some particular kind of property; like land, for instance. The ownership of land is only a conventional right, and, therefore, the state reserves to itself, in Article IX, the right of "eminent domain," and will take a man's land whenever it is needed for a street or any other public purpose, whether he is willing to let it go or not. But, though the state can thus justly break through his conventional right to hold land, it cannot justly take away his inherent right to his property, and, therefore, the Constitution provides (I, 13) that whenever the state takes away any one's land, it must pay him a fair price for it.

These examples will show the distinction between inherent and conventional rights, which must be kept carefully in mind all through this article. The object of this Declaration of Rights, with which our state Constitution so nobly begins, is to secure the *inherent* rights of every person who comes within the jurisdiction of the state. The line between inherent and conventional rights is very carefully and ably drawn. And it is to secure these rights by some power stronger than a bit of printed paper that the machinery of the state government was established in the rest of the Constitution.

III. The end of government is to secure our inherent rights.—

The end of all government is to secure us in our individual freedom. A government that does not do this, is not worth having. The first duty of every government, whether it is a monarchy, an aristocracy or a democracy, is to secure the subjects or citizens of that government in those inherent rights, without which they cannot be truly free. The right to life, to personal liberty, to have a fair chance in life, and to seek our happiness as we please, so long as we do not infringe on the rights of any one else, are inherent rights. To secure them is the object of all government. There is no peculiar sacredness in any institutions of government. They are but the means by which the end of good government is attained. Any form of government needs the consent of those who are governed, and, if it becomes oppressive, they have a right to change it.

SECTION II.—SLAVERY PROHIBITED.

There shall be neither slavery, nor involuntary servitude in this State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

I. Slavery prohibited.—

When the state Constitution was adopted, African slavery was allowed in many states of our Union, and it was, therefore, necessary for the state of Wisconsin to put itself on one side or the other of this question. This state prohibited slavery by its Constitution.

Slavery violates the inherent right to liberty and the

pursuit of happiness, and is, therefore, prohibited justly and consistently with Section 1 of this article.

This provision in our state Constitution is now made needless by the thirteenth amendment to the United States Constitution, which prohibits slavery everywhere in the United States.

The wording of the thirteenth amendment of the United States Constitution is plainly taken from this section and other similar sections in the Constitutions of other states, and from the Ordinance of 1787.

II. Imprisonment for crime excepted.—

A person may be shut up in the state's prison, and thus have his liberty taken away, whenever he shows that he is a dangerous character by doing some crime. *His* right to liberty and the pursuit of happiness is taken away from him for these reasons: to stop him for a time from infringing on other people's rights, to reform him, if possible, and to prevent others from committing like crimes, by fear of a like penalty.

Section III.—Freedom of Speech.

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions, or indictments for libel, the truth may be given in evidence, and if it shall appear to the jury, that the matter charged as libellous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the facts.

I. Freedom of speech.—

Next to the right to life and to liberty of body, is the liberty of speech. In most countries it has been

thought that it is not safe to let people speak or write what they please. But in the United States the people govern, and therefore we are not afraid to allow free speech. In Wisconsin, as in the rest of our country, everybody can speak or write or print whatever he pleases, with one exception, named in this section.

We have found out in America that the truth will take care of itself, if we only let it alone and give it a fair chance; and that the more we try to help the truth by law, the more we really hurt it. Freedom is the best atmosphere for truth to live in. Tennyson's words in praise of England are just as true of America:

"It is the land that freemen till,
That sober-suited Freedom chose;
The land where, girt with friends or foes,
A man may speak the thing he will;

"Where faction seldom gathers head;
But by degrees to fullness wrought,
The strength of some diffusive thought
Hath time and space to work and spread."

II. Limited by the rights of reputation.— The liberty of speech is limited by the rights of other people. If we were free to say anything we chose, we might harm other people very greatly. Therefore, although we may speak our minds, we must not do it so as to injure any one's reputation.

This is the rule of the English common law, which would be our own law on the subject, were it not for the rest of this section, as the common law is adopted by this Constitution. (XIV, 13.)

Under the common law, the rule was "the greater the truth the greater the libel."

But under this section of our Constitution, any one may

tell that which will injure the reputation of another, on certain conditions: First, it must be true. Second, the one who tells it must tell it with good motives—that is, not maliciously or spitefully. Third, he must tell it for justifiable ends—that is, not for the sake of hurting some one's reputation, but to do some good.

Usually, the judge determines the law, and the jury the facts in the case; but in libel suits, under this section, the jury decide everything—the fact, whether the thing charged was actually said, or written, or printed, and the law, whether the thing charged is a libel within the meaning of the law. By this it is not meant that the judge has nothing to say about the law; he instructs the jury as to what the law is, and then the jury decide for themselves.

Section IV.—Freedom of Assembly and Petition.

The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

I. The right of assembly.—

In many countries, the government is afraid to let the people have political meetings or get up petitions for the redress of grievances. Here, any number of people may come together in any sort of societies, religious, social or political, or even in treasonable conspiracies, and, so long as they behave themselves and do not hurt anybody or make any great disturbance, they may express themselves in public meetings by speeches and resolutions as they choose.

II. The right of petition.—

There are very few countries in which the government is so despotic that it refuses to receive petitions

and to hear the complaints of its subjects or citizens. And ours being a free government, of course gives this right to its citizens.

If any person or persons wish to have the laws changed in any way, they have a right to petition the legislature for that change. The legislature must receive and listen to the petition, and then it may make the change in the laws, or not, as the members may see fit. So also with city councils and county, village, town and district boards. On all things that are under their care, they *must* receive and listen to all petitions that anybody chooses to send them; and then they may do as they please about acting on them. So, also, for anything that is in charge of any executive or judicial officer. The governor *must* receive all petitions for pardon, but he can do as he chooses about granting the pardon.

SECTION V.—TRIAL BY JURY.

The right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

Trial by jury is an ancient English custom that was meant to secure fair trials, so that the decision should not depend upon the judge alone, but also upon a number of unprejudiced citizens. With the rest of the English common law, trial by jury was brought over to this country by the English colonists, and has been adopted in every state in our Union. The Constitution therefore says that the right of trial by jury shall *remain inviolate.*

A jury generally consists of twelve persons chosen in such a way that they shall be impartial. In suits be-

fore a justice of the peace, the number is usually six. In any verdict of a jury all must agree.

A jury trial may be waived by a criminal when he pleads "guilty" in open court. There is no need of a jury to establish his guilt, since he has himself confessed it in a regular and lawful way. In criminal cases, the jury can determine only the fact, and that *is* determined when the plea of "guilty" is put in, and therefore no jury is needed to determine it.

In civil suits, a jury trial may be waived where both parties agree to it. In cases brought before a justice of the peace, the presumption is that a jury will not be wished, and the case will be tried without one unless either party call for a jury. In that case, the call cannot be denied, under the Constitution. In civil suits before a judge, the presumption is that a jury is wished, and the case will be tried before a jury unless both parties agree to waive it. Equity cases are decided without a jury.

Section VI.—Excessive Bail and Punishment.

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

I. Excessive bail.—

Bail is the security given that a person arrested for any offense will appear in court and stand his trial when the time comes. When no bail is given, the person charged with the offense will be kept in jail till his trial comes off; not to punish him, for that is unlawful, under Section 2, for he has not yet been "duly convicted" of any crime, but to make sure that he will be on hand to be tried. Should a justice of the peace ask too great bail, the case can be carried before a circuit or county

judge or a court commissioner (VII, 23), on a writ of *habeas corpus*, and the bail be reduced by him, should he think it is excessive. If a circuit judge asks too great bail, the case could be carried in the same way before the supreme court.

II. Excessive fines.—

Fines and punishments are prescribed by law for each offense. The law prescribes the greatest and the least fine or other punishment, and the court must not impose a greater punishment than the greatest, or a less one than the least prescribed by law. If the law, itself, should fix too severe a penalty, the judge could decide that the law is unconstitutional, and refuse to punish the offender so heavily. No such case, however, has yet arisen in this state.

III. Cruel and unusual punishments.—

Cruel and unusual punishments are understood to mean such punishments as whipping, branding with a hot iron, maiming, torturing, burning at the stake, breaking on the wheel, drawing and quartering, and the like. These were, until a century or two ago, inflicted everywhere; but have now been abolished in all civilized countries.

SECTION VII.—RIGHTS OF ACCUSED PERSONS.

In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment, or information,

to a speedy public trial by an impartial jury of the county or district wherein the offence shall have been committed; which county or district shall have been previously ascertained by law.

I. The right to have counsel.—

Every person has a right to be his own lawyer, if he chooses. But most persons will always prefer to have a lawyer carry on the case for them, who is skilled in the technicalities of law, who knows how things are done in a court room, and who can talk. As the law used to be in England, an accused person was not allowed a lawyer, while the state had the best lawyers to plead the case against him. This section of the Constitution prevents any such injustice. Every accused person can have a lawyer, if he chooses. If he is too poor to furnish one himself, the judge appoints one for him, who is paid by the county. And every accused person has also the right to speak for himself if he chooses, after the lawyers are through.

II. To know the accusation.—

An accused person always has a right to see the indictment against him, and to know for what offense he is to be tried, so that he may be prepared to defend himself as well as he can; and, if he is innocent, so that he can prove his innocence.

III. To cross-examine witnesses.—

He has the right to meet the witnesses face to face, so that he or his lawyer may cross-examine them to see whether they tell the truth or not.

IV. The right to subpœna witnesses.—

He may *subpoena* witnesses for himself, as the state can against him, so that if any one knows anything about a crime, he may be compelled to come into court and testify, so that the truth may be got at as near as may be.

V. The right to a speedy, public trial.—

The trial for petty offenses, before a justice of the peace, comes as soon as possible. For graver crimes, the trial comes off at the next term of the circuit court, in the county, unless there is some good reason for putting it off.

Trials are always public, and any one can be present who pleases. It is more likely that justice will be done in this way than if the trials were held privately.

VI. The right to an impartial jury of the county or district.—

An accused person cannot be taken to some other part of the state to be tried. If he chooses, he can demand a trial where the offense was committed. If he thinks that the judge is prejudiced, or that the whole county is prejudiced, so that he could not get an impartial jury, he can have a "change of venue" to another county.

SECTION VIII.—RIGHTS OF ACCUSED PERSONS.

No person shall be held to answer for a criminal offense without due process of law, and no person, for the same offense, shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons

shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and 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.

[As amended Nov. 8, 1870.]

I. This section amended.—

The object of the amendment was to do away with the grand jury system. This is not in violation of the United States Constitution, for that applies only to cases arising under United States laws.

II. Due process of law.—

This means in all serious cases, not military, either a preliminary examination before a justice of the peace, or information laid before the district attorney. The object of this, as of the old way of indictment by a grand jury, is to prevent evil-disposed persons annoying innocent people with frivolous or groundless accusations. No person can be held to answer for a criminal charge, unless it can be shown that there is probable reason to suppose that he is guilty.

Minor offenses may be tried before a justice of the peace or a police court, without a preliminary examination.

In time of war, martial law takes the place of civil law for all soldiers and sailors, and all people who live where the war is going on. When nations are fighting, they cannot stop for the slow justice of peace. In time of peace, soldiers and sailors can be punished by the courts for all offenses against the laws; and also by their officers or by court martial, for all offenses against the army regulations. In such cases, martial or military law is considered "due process of law."

III. Not tried twice for the same offense.—

No person can be tried twice for the same offense; but, if the jury disagree, he can be tried before a new jury. That is not another trial, but the same one continued. Or, the case may be carried to a higher court on an appeal, or a writ of *certiorari* or of *error*. In that case, too, it is not a new trial, but the same trial continued; though it is often called, improperly, a new trial.

IV. Not compelled to testify against himself.—

It is the custom in most countries to make accused persons testify against themselves, and formerly, when the accused did not answer the questions as the judge wished him to do, he could be tortured until he confessed all that he had done, and a great deal that he had not done. This injustice is prevented by the Constitution. An accused person may plead guilty if he chooses, and confess to as much as he wishes to, of the charge against him; but he is not compelled to say anything unless he wishes to.

Under the Constitution, also, a witness cannot be forced to answer any question which would criminate himself.

V. Admitted to bail.—

For a definition of bail, see page 22.

Capital offenses are those which are punishable with death. As no crimes are now punished by death in this state, there are, of course, no capital offenses.

VI. The privilege of the writ of habeas corpus.

The writ of *habeas corpus* is a process by which any person unjustly confined, either by private persons or by public officers, can be set free, if he has a right to be free. Any person unjustly detained may sue out a writ of *habeas corpus* before any judge or court commissioner. (VII, 23.) The person detained and the person detaining him are then brought immediately before the judge or court commissioner, the case is heard, and if the person held ought to be free, he is set free at once by the judge or court commissioner.

In time of war and public danger it is often necessary to arrest persons on suspicion, and hold them until proof of their crimes has been secured. In such cases the legislature must suspend the privilege of the writ of *habeas corpus*, and then the officers of the state can imprison any one they please without being liable to have their prisoners freed by a writ of *habeas corpus*.

SECTION IX.—JUSTICE SHOULD BE FREE AND CERTAIN.

Every person is entitled to a certain remedy in the laws, for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

This is a statement of a truth which is only so much talk, except as it is carried out in the laws. This section has no more binding force than any other good advice has. But our statute books show that the legislature has tried to carry this out in good faith. There are very

few wrongs to persons, property or character, for which redress cannot be had under the laws of Wisconsin.

Every person in the state can "obtain justice freely and without being obliged to purchase it." Any judge who should take a bribe would be removed from his office by impeachment (VII, 1) or by address (VII, 13), and be fined and imprisoned beside. It costs nothing to prosecute for any crime. The state carries on all criminal suits in its own name and at its own cost; for they are "against the peace and dignity of the state of Wisconsin." (VII, 17.) In civil suits, which are carried on for the benefit of private persons, each one must pay his lawyer, if he has any, and the party who loses must pay the costs of the suit. With these exceptions, justice costs nothing in Wisconsin.

Section X.— Treason.

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

I. What is treason.—

Under this section, any one may talk treason as much as he pleases, and may even conspire against the government, without being punished for treason. Only open acts of war are counted treason.

II. Proof required to convict of treason.—

Two witnesses are required, because in times of civil war and rebellion party spirit rules so high that one witness might easily swear falsely, or exaggerate the truth.

The confession must be in open court, so that it shall be the real confession of the accused, as he wishes to make it, and so that it shall be truly reported.

SECTION XI.—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 warrant shall issue but upon probable cause, supported by oath, or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

Under the Constitution, the officers of the law cannot search any house and any place they please, to find stolen property. Some one must first swear out a search warrant, and show some reason to think the things wanted are there; and then the person or place can be legally searched—and not before.

SECTION XII.—BILLS OF ATTAINDER, ETC.

No bill of attainder, ex-post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood, or forfeiture of estate.

I. The origin of this section.—

The three things forbidden in the first half of this section are forbidden to every state by the United States Constitution (Art. I, Sec. 10), and are, therefore, forbidden in this state by double authority—that of the state Constitution and that of the United States Constitution.

II. Bills of attainder forbidden.—

A bill of attainder is a bill to punish a single person or a number of persons, named in the bill, without a regular trial.

III. Ex post facto laws forbidden.—

An *ex post facto* law is one to punish, not only those who may afterward break it, but those who have already,

before the law takes effect, done anything contrary to it; or a law which adds a new punishment to former crimes.

For instance, a law to punish with death all murderers who may be convicted of murders they have already done, would be *ex post facto*, because the punishment for that crime is now imprisonment in the state's prison. But a law to hang all persons who are convicted of murder, done after the law goes into effect, would be perfectly constitutional.

IV. Obligation of contracts not to be impaired.

Contracts once made cannot be broken, unless the persons who make the contract all agree to break it. But the law can determine what shall be the conditions of a valid contract.

For instance, a contract which is for an immoral purpose, or which involves an immoral consideration, is never valid, and may always be broken. A contract to sell counterfeit money, a contract to kill another person for so much money, a bargain made by a judge to give a wrong decision, would none of them be binding contracts. The parties had no right to make them in the first place, and therefore can break them when they please. The obligation of these contracts is not impaired by the law annulling them; for they never had any obligation. The law can at any time fix the conditions of all future contracts, but it cannot impair the obligation of past contracts, provided they were legal when they were made. This provision of the Constitution in civil cases, is like the provision against *ex post facto* laws in criminal cases.

V. Corruption of blood forbidden.—

Corruption of blood is punishing children for the sins of their fathers. Under the English common law, when any one was convicted of treason, he forfeited all his property to the state, and his blood was considered corrupt;

so that his children and other relatives could not inherit from him. His link in the chain of inheritance was broken, so that none could inherit property or titles or civil rights from him. This great injustice of punishing children for what their fathers have done, is abolished by this section.

SECTION XIII.—NO PROPERTY TAKEN WITHOUT COMPENSATION.

The property of no person shall be taken for public use, without just compensation therefor.

The state has the right of eminent domain, and can take private property for public use whenever it chooses. The Constitution provides that when private property is so taken there shall always be just compensation given for it.

SECTION XIV.—FEUDAL TENURES FORBIDDEN.

All lands within the State are declared to be allodial, and feudal tenures are prohibited:—Leases and grants of agricultural land, for a longer term than fifteen years, in which rent, or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land, hereafter made, are declared to be void.

I. All lands allodial.—

Allodial lands are those which are held by the owner without being subject to any feudal service or any tax or rent other than the tax levied by the government. Nearly all the land in the United States is allodial.

II. Feudal tenures forbidden.—

Feudal tenure originally was military service; later, it came to mean any service or rent that is to be perpetual.

The time is limited for which farming land may be rented, because, otherwise, this section might have been evaded by leasing land for a very long period (for instance, for nine hundred and ninety-nine years, the term for which land has sometimes been leased in England). This is restricted to agricultural lands, because land is frequently leased for building purposes for a longer time than fifteen years.

III. Entails forbidden.—

Fines and like restraints upon alienation are commonly called "entails," and are frequently used in England to keep large estates together after the death of the owner.

IV. The object of this provision.—The object of this provision of the Constitution is to prevent the growth of a landed aristocracy, such as is the curse of England to-day. To do this, feudal tenures and entails are both prohibited by this section. *Primogeniture*, or the right of the eldest son to inherit all the real estate with the title, has never been established in this state, and, probably, never will be. These three things, feudal tenures, entails, and primogeniture, are the three pillars of the English aristocracy.

What we want in this country is, that the people who till the land should own the land; and that anybody who wants land may be able to get it by offering a fair price for it. The farmers in moderate circumstances, who work their farms themselves, are the backbone of any country. With them, Rome conquered the world; for lack of them, in later years, she lost it again. The honest yeomanry of England were her strength in former days; the lack of that class now is her greatest weakness. Slavery prevented the growth of such a class of independent farmers in the southern states,

and made labor dishonorable, and was, therefore, the cause of the ignorance and poverty of a large part of the whites as well as of the blacks, all of which is being rapidly changed now that slavery is abolished. If we would be a nation of intelligent freemen, we must never allow the farming class to be divided into a haughty aristocracy and a degraded peasantry. That danger this section helps to guard against.

SECTION XV.—PRIVILEGES OF RESIDENT ALIENS.

No distinction shall ever be made by law, between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property.

Aliens are foreigners who have not yet been naturalized. *Resident aliens* are such foreigners as live in the state. Only aliens needed to be thus protected by the state Constitution, for citizens of other states living here are already guaranteed all the rights of citizens of this state by the United States Constitution. (Art. IV, Sec. 2.) Non-resident aliens are not protected in the holding of property by either constitution. No discrimination has, however, been made against them by law, and it is not likely that there ever will be. Anybody, citizen or foreigner, resident or non-resident, can hold property in this state, under the same conditions.

SECTION XVI.—IMPRISONMENT FOR DEBT FORBIDDEN.

No person shall be imprisoned for debt, arising out of, or founded on, a contract, express or implied.

No person can be imprisoned for debt in this state, unless he has committed some fraud in regard to it. If he obtained property under false pretenses, he can be

imprisoned; not for the debt, but for the fraud. For the debt, he must be sued in the ordinary way. So, if any one embezzles trust funds, whether he be a public officer or a guardian, or a trustee of any corporation, he cannot be imprisoned for the debt, but may be for the embezzlement.

Section XVII.—Exemption Law.

The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt, or liability hereafter contracted.

The legislature has passed very liberal exemption laws. These laws exempt a homestead of forty acres of land, or a village or city lot, with the buildings on it, provisions for a year for the family, the necessary tools for a mechanic, the library of a professional man, and a great variety of things, too numerous to mention.

Section XVIII.—Religious Freedom.

The right of every man to worship Almighty God, according to the dictates of his own conscience, shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent: Nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments, or mode, of worship: Nor shall any money be drawn from the treasury for the benefit of religious societies, or religious, or theological seminaries.

I. The right to worship in our own way.—

One of the greatest evils of every European country is prevented by this section.

There is complete religious freedom here. Any one

may believe and teach whatever he pleases, so long as he does not do anything that interferes with other people's rights.

For instance, any one may believe and teach the doctrine of the Thugs of India; that it is pleasing to their goddess to have them rob and murder travelers. We should have a right to think and to say that it is a very wicked religion; but we could not punish any one by law for believing and teaching it. But let one try to put it in practice by actually robbing and murdering some one, and he can be arrested, tried and punished; not for his wicked belief, but for his wicked actions. So, the Mormons may believe in polygamy, and preach it in this state, without any legal punishment. But if one of them should try to put his belief in practice in this state, by marrying two or three wives, he would be punished; not as a Mormon, but as a bigamist.

II. No appropriations to religious bodies.— No church can be established by law as the state church, nor can any church be supported by appropriations from the treasury. All churches in this state are supported by voluntary contributions. Experience has shown that churches are better and purer when not aided or controlled by the state in any way, and that when not so aided, the money can be raised for their support by voluntary contributions. Churches, however, are by law exempt from taxation.

Section XIX.—No Religious Tests for Office.

No religious test shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law, or equity, in consequence of his opinions on the subject of religion.

Religious tests have been a great evil in Europe. They are prohibited here. Any person who is otherwise qualified, may hold any office in the state, no matter what his religious opinions may be. And no person can be prevented from testifying in any court because of his religious opinions. If the members of certain religious bodies were not allowed to testify, it would be as much as to say that they could not be believed under oath; which would be an unjust stigma to fix on any form of religious faith.

Section XX.— Military Subordination.

The military shall be in strict subordination to the civil power.

We wish to guard against a military despotism in this country. We do not wish to have a successful general seize the government with the help of his army; and we do not intend ever to give him a chance to do it.

The National Guard of this state is under the command of the governor, who is commander-in-chief; and is raised or disbanded at the pleasure of the legislature. Soldiers are responsible to their officers, they to their superiors, and they to the governor, as commander-in-chief. Should he misuse his office, he can be impeached and removed; so that by this means the military is subordinate to the civil power.

Section XXI.— Writs of Error.

Writs of error shall never be prohibited by law.

After any criminal case or civil suit has been decided, if the decision is wrong by reason of any informality in the proceedings, or a wrong decision in regard to the law, it can be corrected by a "writ of error," which

carries it up to a higher court, where if the decision is wrong, a new trial will be ordered.

Section XXII.—Some Good Advice.

The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

Of course this has no binding force. It is only a recommendation, which the people can follow or not as they please. We cannot make people good by law. We can only stop them from doing anything very bad; but though we cannot make people virtuous by law, we need to have them so, to have the laws amount to anything. In this country the people make the men who make the laws, and the men who enforce the laws. Our free government depends upon the people, who can make it a blessing or a curse, according as they are themselves intelligent, upright and virtuous, or the opposite. It will do no good to write this Constitution on paper, unless the people of Wisconsin are themselves, as expressed in this twenty-second section, just, moderate, temperate, frugal and virtuous; and unless they know the principles on which our government is founded. That they may know these principles, the legislature has wisely decided that this Constitution shall be taught in our common schools; and it ought to be taught so that the scholars shall not only know the words, but so that they shall understand its principles, and know the reasons for them.

Aristotle said, two thousand years ago: "But whosoever endeavors to establish wholesome laws in a state, attends to the virtues and vices of each individual who composes it; and hence it is evident that the first care of a man who would found a state, truly deserving that name, and not nominally so, must be to have his citizens virtuous; for, otherwise, it is merely an alliance for mutual defense."

He also said: "That which contributes most to preserve the state is to educate children with reference to the state; for the most useful laws, and most approved by every statesman, will be of no service, if the citizens are not accustomed to and brought up in the principles of the constitution."

ARTICLE II.

BOUNDARIES AND JURISDICTION.

SECTION I.— BOUNDARIES.

It is hereby ordained and declared, that the State of Wisconsin doth consent and accept of the boundaries prescribed in the act of Congress entitled "an act to enable the people of Wisconsin Territory to form a Constitution and State government, and for the admission of such State into the Union," Approved August sixth, one thousand eight hundred and forty-six, to wit: — Beginning at the north-east corner of the State of Illinois — that is to say; at a point in the centre of Lake Michigan, where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menominie river; thence up the channel of the said river to the Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line to the centre of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the

main channel of said river to the first rapids in the same, above the Indian village, according to Nicholet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the north-west corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois, to the place of beginning, as established by "an act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," Approved April 18, 1818. Provided, however, That the following alteration of the aforesaid boundary be, and hereby is proposed to the Congress of the United States as the preference of the State of Wisconsin, and if the same shall be assented and agreed to by the Congress of the United States, then the same shall be and forever remain obligatory on the State of Wisconsin, viz: leaving the aforesaid boundary line at the foot of the rapids of the St. Louis river; thence, in a direct line, bearing South-westerly, to the mouth of the Iskodewabo, or Rum river, where the same empties into the Mississippi river, thence down the main channel of the said Mississippi river, as prescribed in the aforesaid boundary.

I. How the boundary can be changed.—

These are now the boundaries of the state of Wisconsin. It is not likely that they ever will be changed; for, in order to change them, it is not enough for us to wish them changed; Congress must also consent to the change, and so must the legislature of the other state or states concerned. For instance, if we should wish to have that part of Michigan that lies between Lake Superior and Lake Michigan annexed to this state, we must get the consent of the legislature of Michigan, and of Congress, as well as of our own legislature. Should any such change be made, it would be, really, an amendment to the Constitution; but it would not need to be formally amended in any of the ways prescribed by Article XII.

Under the United States Constitution (IV, 3), the consent of the legislatures of the states concerned, and of Congress, is enough. That would of itself amend this part of the Constitution, without any further action by the state of Wisconsin.

II. Water boundaries not the true ones.— The boundary of Wisconsin is commonly given as Lake Superior and the state of Michigan on the north, and Michigan and Lake Michigan on the east, and sometimes, also, the Mississippi river is given as part of the western boundary. These boundaries are not the true ones. The state of Wisconsin extends to the center of Lakes Michigan and Superior; and to the center of the main channel of the Mississippi river. As the states of Wisconsin and Michigan meet in the center of Lake Michigan, it is not Lake Michigan that bounds Wisconsin on the east, but the state of Michigan, and so on. The correct boundary of Wisconsin in general terms, is as follow: Wisconsin is bounded north by Minnesota and Michigan, east by Michigan, south by Illinois, and west by Iowa and Minnesota.

III. Boundaries narrower than originally intended.— Wisconsin being the last of the five states organized out of the Northwest Territory, received less territory than was originally intended. In the original plan for organizing that territory into five states, Wisconsin was to have for its southern boundary a line drawn due west from the southern end of Lake Michigan, including what is now the great city of Chicago, and the best part of northern Illinois. She was to have what is now the northern peninsula of Michigan, and was to

have the Mississippi instead of the St. Croix for the northern part of its western boundary. But one large and fertile tract of land was given to Illinois, another to Michigan, and still another was secured for what is now Minnesota, against the protest of the infant state. Enough, however, was left for a fair and fertile state.

Section II.—Restrictions on State Jurisdiction.

The propositions contained in the act of Congress are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona-fide purchasers thereof; and no tax shall be imposed on land, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. Provided, That nothing in this Constitution, or in the Act of Congress aforesaid, shall in any manner prejudice, or affect the right of the State of Wisconsin to five hundred thousand acres of land, granted to said State, and to be hereafter selected and located by and under the Act of Congress entitled "an act to appropriate the proceeds of the sales of the public lands, and grant pre-emption rights," Approved September fourth, one thousand eight hundred and forty-one.

This section can be amended in either of the ways prescribed in Article XII, if the consent of Congress is also obtained, but not otherwise.

I. The title to land.—

The title to land is of great importance, and in all civilized countries great pains are taken to make the titles to land secure. The United States has sold, or is still offering for sale, the greater part of the land in the state. Its patents for land are really warranty deeds. The United States guarantees to the purchaser a clear

title to the lands. Now, to avoid all trouble, and to make the title perfectly sure, Congress provides that the state shall never interfere with titles to land derived from the United States. Otherwise, it is possible that the state might at some future time have claimed that, when the United States ceded the territory to the new state of Wisconsin, they ceded also the right to dispose of those titles. This is now forbidden by the law of Congress and by our Constitution. It is a fact, however, that our legislature, like those of several other states, has tried to regulate the United States surveys, and correct the errors in them. These laws were, of course, unconstitutional, and have now been repealed.

The titles to land in the state of Wisconsin all either come from the United States or are indorsed by the United States. The Indians were the original owners of the soil. But when America was discovered by Europeans, they held the Indians' ownership of little account. As between themselves, they finally determined that the nation which first discovered a tract of country should have the title to it, provided that the discovery was followed up by occupancy within some reasonable time. European nations had already recognized the fact that a title to land may be acquired by conquest in war, or by peaceful purchase. So that various nations gained title to land in America in some one or other of these three ways:

1. Discovery, followed by occupation.
2. Conquest.
3. Purchase, or voluntary cession.

It would be interesting to trace out the different nations in which the sovereign power over some part of the United States has been at some time vested, and the various processes by which the sovereign power, and with it the original title to land, and the right of eminent domain, has passed from

one nation to another. But we can only take up now our own state.

The original title to land in Wisconsin belonged, of course, to the Indians. This title was, however, disregarded by France, which claimed under the discoveries of the early explorers, and the settlements made soon after at Green Bay and Prairie du Chien. The Wisconsin Indians acknowledged the sovereignty of France for a century and a half. In the great war known in American history as the Old French War, France was beaten and paid the costs of the war by ceding all her possessions in America to England. This included what is now Wisconsin. After the Revolutionary War, England in like manner ceded what is now Wisconsin to the new nation which had conquered its freedom. When the United States admitted Wisconsin to the Union, she was admitted as a sovereign state; and the United States gave to Wisconsin, by the act admitting her to the Union, the sovereign title to the land, with certain restrictions, which are embodied in our Constitution. Without counting the Indians, the territory embraced in what is now the state of Wisconsin has passed through the following hands:

1. France, by discovery and settlement.
2. England, by conquest.
3. The United States, by conquest.
4. The state of Wisconsin, by peaceable cession.

Now, at every change of sovereignty, the rights of private owners of land have been carefully guarded.

There was no private ownership among the Indians, but the tribes have always sold their lands as tribes.

A few patents for land were issued by the French government, and the rights of owners under them were guaranteed by the treaty of cession from France to England. A like guaranty was made in the treaty of cession from England to the United States, and a like guaranty is given in the act of Congress admitting Wisconsin to the Union, and confirmed by the clause in this Constitution forbidding interference with United States titles to land.

The original title to all the land in Wisconsin thus depends upon the guaranty of the United States. Every person who owns a foot of land in Wisconsin obtained it either from the state or United States, or from some person or series of persons, the first of whom received it from the state, the United States, England or France. It is therefore the interest of every person who owns land to defend the government which guarantees him possession of it.

II. The primary disposition of the soil.—The land of the state, with some small exceptions, has been divided into townships, sections and forty-acre tracts by the United States government.

The division into townships depends upon the base line, which is the southern boundary of the state, from which all townships are numbered north, and the principal meridian from which all ranges of townships are numbered east or west, as shown on any township map of the state. The "correction lines" afford really new base lines as far as measurement is concerned, though the numbering is not begun over again at them. These correction lines are made necessary by the sphericity of the earth, causing the meridians to draw toward one another as we go toward the pole. If the first township north of the base line is exactly six miles wide, and its east and west boundaries being each a true meridian, are extended northward, the next township will be a little less than six miles wide, and so on till the discrepancy is so great that a fresh start must be taken with townships again exactly six miles wide.

The townships again are divided each into thirty-six sections, which would be each exactly a mile square if the survey were always accurate, and if the surface of the earth were plane instead of convex. These sections are numbered, beginning at the northeast corner and going west and then east again, and so on back and forth and ending with section thirty-six in the southeast corner of the township. Section sixteen in each township was given by the United States to

the state for the school fund, and is popularly known as the "school section."

Each section is divided into quarter sections and then again into quarters of quarters, which should each contain forty acres, except for the errors noted above.

All deeds and mortgages of land, except city and village lots, give the description of the land in conformity with this survey. All state land when it is sold, is sold in forty-acre lots, described in conformity to the United States survey. The state thus conforms in every way to the primary disposition of the soil made by the general government.

In the case of the old land grants near Green Bay which were made so many arpents wide on the Fox river and running back from the river perpendicularly to it, and in the case of the towns of Stockbridge and Brothertown, which were laid off in tracts of fifty and one hundred acres for the Indians, the state recognizes these methods of survey also and does not interfere with the platting of the land as authorized by the United States.

III. United States land not taxed.—

Of course it would not be fair to tax the land that belongs to the United States; for the government is holding it for the general good, and not to make any profit out of it. Therefore Congress provided, and the state agreed, that the United States land should never be taxed. Neither can any tax be imposed on land owned by the United States for postoffices or for the soldiers' home.

IV. No higher taxation for non-residents.—

The clause that prevents the state from taxing non-resident proprietors higher than residents is put in because that would be a way of interfering with the title to

property. The state could easily, were it not for this clause, tax non-resident proprietors so high that they would sell out cheap, or let their land be sold for taxes.

V. School land.—For more about the five hundred thousand acres of land, see Art. X, Sec. 2. This land was given to the state by the United States, for the benefit of common schools, and the proceeds of its sale form a large part of the school fund of the state.

ARTICLE III.

SUFFRAGE.

I. Our work thus far.—

We have considered in the first two articles: 1. *What the governing is for*—to secure certain inherent rights to the people of Wisconsin; and 2. *What is to be governed*—all the land and the people upon it within fixed boundaries.

We now come to the main body of the Constitution, *How the government is to be carried on*; and shall proceed to study the machinery of the state government in the order given in the Constitution.

II. Our government a representative democracy.

Our government is a democracy, or a rule of the people; but it is a *representative* democracy. The people rule, but they do not make or execute the laws directly.

The people of Wisconsin cannot all leave their business and travel, some of them a long way, so as to get together in one

place and make the laws. Even if they could do this, there would be too many of them to do the business of making laws in any orderly way. And even if they made the laws, they would have to choose somebody to see that the laws were obeyed. It is impossible for the people all to get together in mass meeting and vote what they want done, and then do it. They must choose some one to make laws for them, and to execute those laws; that is, to *represent* the people.

The form of every law, as prescribed by Article IV, Section 17, is: "The people of the state of Wisconsin, *represented* in senate and assembly, do enact as follows." Our government is a representative government. It is not a pure democracy, nor, from the nature of the case, can it be.

III. The first process of representation.—

The first process of representation is, that the men over twenty-one years of age (with some few exceptions) *represent* the women and children and vote for them.

This is not because women and children are not citizens; they are citizens, as we shall soon see. It is not because this government is an aristocracy of men, who rule the women and children against their will. The men do, on the average, fairly represent the women and children. Some men do not fairly represent the women and children of their own families; but most of them do. And the proof that they do is, that the mass of women neither rebel or petition against being represented by the men; and do not wish to vote.

Some women are not satisfied with this process of representation, and are constantly at work to secure a change in this first process of representation, so that women shall represent themselves by voting, instead of being represented at the ballot box by the men. It is possible that some day they may succeed in carrying woman suffrage in this, as has been done in several states already. In that case, the men and women together would represent the children. Women now vote in school meetings and hold school offices.

IV. The second process of representation.—

The second process of representation is that the voters choose some of their own numbers to make the laws and others to execute them.

This they do by meeting on election day in their own town, or village, or ward of a city, and each placing in a ballot box slips of paper, printed or written, with the names of the person each one wishes to have fill such and such offices. These candidates for office are usually selected by caucuses and conventions of the political parties some time before election day. But there is nothing to prevent any one putting himself forward as an independent candidate, which is frequently done. And there is nothing to prevent any voter voting for any person he chooses, whether such person is a candidate or not. The voting is all done on one day, and the votes are then counted by the proper officers, and the result announced.

SECTION I.—QUALIFICATIONS OF VOTERS.

Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided within the State for one year next preceding any election, and in the election district where he offers to vote such time as may be prescribed by the Legislature, not exceeding thirty days, shall be deemed a qualified elector at such election:

1. Citizens of the United States.

2. Persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization.

3. Persons of Indian blood who have once been declared by law of Congress to be citizens of the United States, any subsequent law of Congress to the contrary notwithstanding.

4. Civilized persons of Indian descent, not members of any tribe.

Provided, that the Legislature may, at any time, extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election.

And provided further, that in incorporated cities and villages, the Legislature may provide for the registration of electors, and prescribe proper rules and regulations therefor.

[As amended Nov. 7, 1882.]

I. Classes of persons given the privilege of voting.—

The following four qualifications are required of all voters:

1. *Male sex*: This shuts out women.

2. *Twenty-one years of age*: This shuts out children. The exact age of twenty-one was taken because it is the age in England and America when a boy becomes legally a man.

3. *One year's residence in the state*: This shuts out new comers from other states or from foreign countries, till they have had time to get some acquaintance with our laws and government.

4. *Some days' residence in the election district*: This prevents persons voting where they do not have any real residence.

A voter must also belong to one or the other of the following classes of persons:

1. He must be a citizen of the United States, which may be either by birth or naturalization.

2. Or he must be a foreigner who has taken out his "first papers."

3. Or if he is an Indian, he must be a civilized Indian, or a member of a tribe once declared civilized by Congress, no matter whether they are so now or not. Civilized Indians living in the state, not on a reservation, and not receiving aid from the United States, may be made voters by swearing to that fact before the clerk of the court of their county.

A voter must have *all* the first four qualifications and *some one* of the other three.

II. Foreigners vote before they are citizens.—

Under our Constitution, persons of foreign birth coming here may vote on the same terms as citizens, after taking out a paper declaring their intention to become citizens of the United States, which can be done at any time. In most states foreigners must become naturalized in order to vote; but it is not so here.

Such voters, who have only declared their intention to become citizens, are eligible to all town and county offices, and to all state offices, except governor, lieutenant governor, and judge of the supreme or circuit courts.

III. Registration of voters.—

The registration of voters is done by preparing a list of voters in the village or in the ward of a city, some time before election day, and publishing that list for corrections. Persons not on that list can only vote by proving that they are voters. This is intended to prevent persons voting who are not entitled to do so. Such frauds are much more likely to occur in cities and villages than in the country, where everybody is known to all his neighbors.

IV. Extension of the suffrage.—

The provision for extending the suffrage by a law ratified by a vote of the people, was intended to cover the case of negroes. The suffrage was actually extended to

them under this provision of the Constitution. Under this provision women otherwise qualified have been given the right to vote at school elections.

V. United States citizenship.—

This subject is determined by the United States Constitution (Amendment XIV) and by international law.

Any person is a citizen of the United States who is born in this country, or has been naturalized here, and does not become a citizen of some other nation afterward.

VI. State citizenship.—

State citizenship is not exactly the same as United States citizenship. There are four classes of citizens of the state of Wisconsin:

1. Native born citizens of the United States, of all ages and both sexes, who reside in the state, whether whites, negroes or Indians.

2. Naturalized citizens who reside in the state, including the families of men who have been naturalized, and including Indians made citizens by act of Congress, and civilized persons of Indian descent who have become citizens.

3. Foreigners who have declared their intentions to become citizens of the United States, and who are otherwise qualified to vote, *but not their families.* This class are citizens of the state, but not of the United States.

4. Indians who have once been made citizens by act of Congress, notwithstanding any repeal of that act.

This was meant to apply to the Stockbridge Indians, who were all at one time partly civilized, and were therefore made citizens by act of Congress. A part of them afterwards wished to go back to their savage state again, and be governed by their old tribal customs, instead of by the state laws; and an act of Congress was passed to that effect. When this Constitution was framed, this clause was inserted, so that these Stockbridge Indians could vote, just as if they were civilized.

These last two classes of persons are citizens of the state, but not of the United States. They are citizens of the state; because they are voters. The supreme court has, however, decided that this privilege is to be construed strictly, and does not include their families. The sons of a foreigner, who has declared his intention to become a citizen of the United States, but who has not completed his citizenship by taking out his "second papers," unless they were born in this country, are not voters until they have themselves taken out their first papers, after they come of age. Neglect or ignorance of this point of law has caused much trouble.

Section II.—Disqualifications for Voting.

No person under guardianship, non-compos mentis, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, or felony be qualified to vote at any election, unless restored to civil rights.

I. Persons under guardianship.—

A person may be placed under guardianship when it is evident that he cannot take care of himself—either

because of continual drunkenness, or idiocy or insanity.

Non compos mentis means of "unsound mind"—an idiot or an insane person.

It is plain that persons who cannot take care of themselves cannot help to govern the state; and, therefore, ought not to vote.

II. Traitors and felons.—

Felony means, under our law, any state's prison offense. A traitor to our state or nation, of course, ought not to help govern it; nor should a person who is so bad that he must be sent to state's prison; therefore, traitors and felons are not allowed to vote. Such persons may be restored to civil rights either by special act of the legislature or by the governor's pardon.

Section III.—Voting by Ballot.

All votes shall be given by ballot, except for such township officers as may by law be directed, or allowed to be otherwise chosen.

I. Voting by ballot.—

The reason for voting by ballot is that it gives an opportunity for secrecy, and therefore for a more independent vote. Voters need not tell how they vote unless they wish to do so.

The time was when voting was done *viva voce*, that is, each voter declared to the judges of election the names of the persons for whom he voted, and the clerks of election wrote it down. Under this system there

was less opportunity for frauds in counting the votes, but more opportunity for coercion of workmen by employers.

It was part of the great democratic revolution in the first half of this century that when the poorer classes were given the right to vote, they should be protected in that right by the secrecy of the ballot.

II. The Australian ballot.—

This method of voting by ballot originated in Australia, whence its name. It has been adopted with various modifications in most of our states.

The form of the Australian ballot now in use in Wisconsin gives the nominees of the various parties in perpendicular columns and the offices in horizontal lines. If a voter wishes to vote for all the candidates of one party, he must make a cross in the circle at the top of the proper column, where the name of the party is given. But if he wishes to vote for some candidates of one party and some of another or for independent nominations he must mark his ticket according to the instructions given for that case, so as to show which candidates he wishes to vote for.

The original Australian ballot, which is in use in some states gives the names of all the candidates for each office in alphabetical order, compelling the voter to select each name he wishes to vote for. This is confusing to the voters where so many offices are to be filled at the same election. Consequently in most states, including Wisconsin, the list of offices and candidates is so arranged that the voter can vote for all the nominees of his own party if he wishes to do so by one

mark. The effect of this is to encourage voting for the whole party ticket, while the effect of the original Australian ballot was to encourage independent voting.

The advantages of both forms of the Australian ballot are:

1. **Greater secrecy.**—All the ballots are printed by public officers, and one is given to each voter, and a secret place is provided for him in the voting booth in which he marks the ballot as he pleases.

2. **Greater freedom of voting.**—No voter can have a ballot forced on him and be followed up to see whether he hands that ballot to the election officers.

3. **Less opportunity for bribing voters.**—If there is no way of learning how a man votes, it does not pay to bribe him, and then trust his word as to how he votes.

4. **Encouragement for education.**—An illiterate or a blind voter is allowed to have help in marking his ballot, but illiterate voters are often ashamed to confess their ignorance. It is impossible to vote a large number of illiterate men by merely handing them tickets and telling them to go and vote them. Now the tickets can only be obtained of the officers at the time of voting, and politicians must now educate their followers enough so that they shall be sure to mark their ballots right.

SECTIONS IV AND V.—QUESTIONS OF RESIDENCE.

No person shall be deemed to have lost his residence in this State, by reason of his absence on business of the United States, or of this State.

No soldier, seaman, or marine, in the Army or Navy of the United States shall be deemed a resident of this State, in consequence of being stationed within the same.

I. How residence not lost.—

If it were not for this proviso in the Constitution, a United States officer, or a soldier, or a sailor, would lose his residence in this state while he was absent on United

States business, and would have to live a year in the state when he came back, before he could vote.

II. How residence not gained.—

This has the same reason in it as the last provision. Soldiers, sailors or marines are citizens, not of the state where they happen to be stationed for the time, but of the state of which they were citizens when they entered the United States service. If they vote anywhere, they must vote there. One who is a citizen of this state, however, can vote here.

Section VI.—Other Disqualifications.

Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or larceny, or of any infamous crime, and depriving every person who shall make, or become directly, or indirectly interested, in any bet or wager depending upon the result of any election, from the right to vote at such election.

A law has been passed which forbids any person convicted of bribery from voting at any election, unless restored to civil rights.

A law has been passed which forbids any person who is interested in a bet on an election from voting at that election.

The Constitution also prohibits from voting at any election any inhabitant of the state who is engaged in a duel, either as principal or as accessory. (XIII, 2.)

ARTICLE IV.

LEGISLATIVE.

DEPARTMENTS OF GOVERNMENT.

The government of the state of Wisconsin is divided into four departments: legislative, executive, administrative and judicial. This is one more department than is found in the government of the United States. In that the administrative is not separated from the executive, as it is in the state government.

The legislative department is the most important, because it makes the laws which are acted on by the other departments, and because, to a considerable extent, by those laws, it creates offices and confers powers upon them.

The legislature represents the people, and therefore the style of all laws is: "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows." (Section 17.)

SECTION I.— IN WHOM LEGISLATIVE POWER VESTED.

The legislative power shall be vested in a Senate and Assembly.

The legislature of this state, like those of all other states of our Union, is organized after the model of the Congress of the United States; with two houses—the upper one, smaller in numbers, and elected for a longer term than the lower house. By this means the lower

house will be likely to represent the wishes of the people, and the upper house will be likely to be more cautious in what they do, and oppose any very hasty and inconsiderate action of the lower house.

The legislature has power to pass any laws not forbidden by the state or United States Constitution; and it has also power to repeal or amend any laws already passed.

Section II.—Number of Members.

The number of the members of the Assembly shall never be less than fifty-four, nor more than one hundred. The Senate shall consist of a number not more than one-third, nor less than one-fourth of the number of the members of the Assembly.

The number of members of the first assembly, called under this Constitution, was sixty-six. The number of senators was then nineteen. (XIV, 12.) We now have the largest number of both that the Constitution allows us, one hundred assemblymen and thirty-three senators.

Section III.—Apportionment.

The Legislature shall provide by law for an enumeration of the inhabitants of the State, in the year one thousand eight hundred and fifty five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the Senate and Assembly, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States Army and Navy.

I. Legislative apportionment each five years.—The United States census is taken every ten years, in the years whose numbers end with zero. The state census is taken every ten years, in the years whose numbers

end with five. So that one census or the other is taken every five years. And, therefore, the state is districted for senators and assemblymen every five years.

The reason for having the apportionment twice as often as the apportionment for members of Congress, was that the state was being settled so fast that it must be re-districted quite often, or the new parts of the state would not have their fair share of assemblymen and senators.

II. The basis of the apportionment.—

The apportionment into legislative districts is based upon the number of inhabitants, so as to make the legislature represent the people as exactly as possible.

Indians not taxed are not citizens of the United States, nor subject to their jurisdiction, and, therefore, ought not to be represented. United States soldiers and sailors who are not citizens of this state are not entitled to vote here (III, 5); therefore, neither of these classes is counted in apportioning members of the legislature.

SECTION IV.—ELECTIONS FOR ASSEMBLYMEN.

The members of the Assembly shall be chosen biennially by single districts, on the Tuesday succeeding the first Monday of November, after the adoption of this amendment, by the qualified electors of the several districts. Such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable.

[As amended Nov. 8, 1881.]

I. The legislature biennial.—

The legislature originally met annually, and all the assemblymen and half the senators were elected each year. The legislature is now biennial and all the assemblymen and half the senators are elected every sec-

ond year in the even numbered years. The legislature meets in its regular session in January of each odd numbered year.

II. Election day.—

The day of election, the Tuesday after the first Monday of November, is the same day as that of electing Congressmen and Presidential electors; and also the same day as that of electing all state officers.

III. Qualified electors.—

The qualified electors of a district are all those who have a right to vote in the state, and who reside in the district.

IV. Rules for districting the state.—

The assembly districts are to be bounded by county, precinct, town or ward lines, because these are the lines that divide the voting districts. It would make a great deal of confusion and useless trouble if two or three different sets of officers were voted for at the same time and place.

It is provided that the assembly districts shall be in as compact form as practicable, for the sake of convenience, and also, as far as possible, to prevent the legislature from so arranging the districts as to give an unfair advantage to either political party.

V. Assembly districts.—

It has been decided by the supreme court of the state that an assembly district cannot consist of parts of two

counties. When a county is too small to form an assembly district, it must be grouped with some other small county which is contiguous. When a county is too large for an assembly district it must be divided into two or more districts. And in forming these districts, precincts, towns and wards must not be divided. About one-half of the counties are thus assembly districts, in consequence of the population of each being somewhere near one hundredth part of that of the state. The opportunities for gerrymandering the districts are thus greatly reduced.

Section V.—Elections for Senators.

The Senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the Assembly are required to be chosen, and no Assembly district shall be divided in the formation of a Senate district. The Senate districts shall be numbered in regular series, and the Senators shall be chosen alternately from the odd and even-numbered districts. The Senators elected or holding over at the time of the adoption of this amendment, shall continue in office till their successors are duly elected and qualified. And after the adoption of this amendment, all Senators shall be chosen for the term of four years.

[As amended Nov. 8, 1881.]

I. Single districts.—

It is provided that assemblymen and senators shall both be elected by single districts. It was the rule under the territory of Wisconsin to give each county its proper number of members of the council and house of representatives, according to its population, and to elect them all on one general ticket for the county. This is still the practice in several states. But the system of

single districts was adopted in the Constitution at a time when other states were changing to that system.

II. Assembly districts not divided.—

No assembly district can be divided in the formation of senate districts. As there are 33 senate districts and 100 assembly districts nearly every senate district will consist of three assembly districts. County lines may, however, be broken in forming senate districts. A county which has two assembly districts may have these assembly districts placed in different senate districts.

III. Term of office.—

The term of office of a senator is twice that of an assemblyman, that is, four years. Half the senators go out each two years. This makes the senate a continuous body.

SECTION VI.—ELIGIBILITY TO THE LEGISLATURE.

No person shall be eligible to the Legislature who shall not have resided one year within the State, and be a qualified elector in the district which he may be chosen to represent.

A member of the legislature must be a voter and a resident of the district which he represents. He need not be a citizen of the United States or have any property or educational qualification.

SECTION VII.—ELECTIONS AND QUORUM.

Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each House may provide.

I. Each house the sole judge of the election of its members.—

If there is any question as to whether any person elected to either house of the legislature was legally elected, the house to which he claims to belong must judge of the facts in the case. If he was elected by fraud, or if false returns were made declaring that he had the majority, when he did not really have it; or if he is not legally qualified to be a member of that house, then the assembly or the senate, as the case may be, is bound to reject him. But each house is the sole judge of the elections and qualifications of its members. If it decides wrongly, there is no remedy under the Constitution. The election or qualification of a senator or assemblyman cannot be inquired into by the courts under a writ of *quo warranto*, as can that of a state or county officer. (VII, 3.)

II. A quorum to do business.—

A quorum is a sufficient number to do business. The Constitution provides that at least half the members of either house must be present before any business can be done; that is, a majority makes a quorum. But if there was no exception to this, it might frequently happen that there would be no quorum; because a majority of the members might stay away, either through carelessness or purposely, to prevent any business being done. The Constitution, therefore, provides that any number of members may meet and call the roll and adjourn again,

so as to keep up the organization; and they may, if necessary, arrest the absent members, and compel them to come in, and thus make a quorum. The sergeant-at-arms of each house, with his assistants, is always sent to arrest absent members.

Upon the final passage of any financial bill, three-fifths of all the members elected to either house are required to constitute a quorum. (VIII, 8.)

Section VIII.—Power to Enforce Order.

Each House may determine the rules of its own proceedings, punish for contempt and disorderly behaviour, and with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

I. The rules of each House.—

The rules of each house may be found in the Blue Book. They are very nearly the same as those adopted by other state legislatures and by Congress. Many of these rules are adopted by all public meetings, and by societies of every sort. Others of them are only fitted for law-making bodies, and therefore are only adopted by legislatures and by Congress. Together, these rules are called the rules of parliamentary practice, because they gradually grew up in the practice of the English Parliament, from which they have been adopted, with slight changes, by every legislative body in the United States.

Under the Constitution, either the senate or assembly can alter any of these rules, or make new ones for itself,

whenever it chooses. And the rules of the senate and of the assembly need not be the same. Each house makes its own rules.

II. Power to punish for disobedience.—

Rules would be of no use unless there was some power to enforce them and to punish for disobedience. Therefore, each house has the right, not only to make the rules of its own proceedings, but to punish those who violate these rules. And this power extends to any one, whether a member of the house or not, who disturbs its proceedings, or who is guilty of what is called "contempt."

This power is the same as that which all courts of law exercise. If any one should refuse to testify before a committee of the legislature when he is summoned to do so, that would be "contempt." Or if any one, whether a member or not, should insult either house by words or actions done in the presence of the house, or should refuse to obey any proper command of the officers of either house, it would be "contempt." But it would not be considered contempt to say or to write or print anything, however severe, against the legislature, anywhere else. To punish any one for words spoken or published outside the legislature itself, would be to violate the freedom of speech guaranteed by Art. I, Sec. 3, of this Constitution. An attempt to bribe a member, or to threaten him into supporting or opposing any measure before the legislature, is "contempt." An attempt to arrest a member of the legislature, contrary to section 15 of this article, is "contempt."

The punishments which either house of the legislature can inflict for contempt or disorderly behavior are repri-

mand, fine and imprisonment, and for members, expulsion.

III. The power to expel members.—

Each house has the right to keep up its moral character and its respectability, by expelling members who are notoriously unworthy. But this power might easily be abused for partisan purposes. Therefore, it is guarded by two provisions: first, to expel a member requires the votes of two-thirds of all the members elected; and second, if the expelled member should be re-elected, he cannot be expelled a second time for the same offense.

SECTION IX.— OFFICERS.

Each House shall choose its own officers, and the Senate shall choose a temporary president, when the Lieutenant-Governor shall not attend as president, or shall act as Governor.

I. The officers of each House.—

The officers of the senate are the president, chief clerk and sergeant-at-arms. (XIII, 6.) The officers of the assembly are the same, except that the presiding officer is called the speaker. These officers are elected by each house, except the president of the senate when the lieutenant governor fills that place. Besides these there are a large number of additional employes.

II. The president of the Senate.—

The lieutenant governor is, by virtue of his office, president of the senate (V, 8), but he cannot act as governor and as lieutenant governor at the same time. When he acts as governor, or in any other way vacates

his office, or is absent from the session of the senate, there must be somebody to act as the presiding officer of the senate. The senate, therefore, elects a temporary president from its own members in such cases, and it has become the practice for the senate at the beginning of the session to elect a president *pro tempore,* who presides whenever the lieutenant governor is absent.

III. Committees.—

All bills must under the rules be referred to appropriate committees. For a list of the committees of each house see the Blue Book. In the assembly the committees are appointed by the speaker. In the senate they are elected by the senate on the recommendation of a nominating committee. There are several joint committees composed of members from both houses. All bills containing appropriations after they have been reported from other committees must under the rules be sent to the joint committee on claims. Special committees are sometimes appointed for investigations, or to consider certain bills.

Section X.—Publicity of Proceedings.

Each House shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each House shall be kept open except when the public welfare shall require secrecy. Neither House shall, without consent of the other, adjourn for more than three days.

I. Publicity of proceedings.—

Each house must keep a journal of its proceedings,

and publish it, for two reasons: first, for convenience, so that it can be referred to when needed, to see what business has been done, and what still remains to be done; and second, for public information. Keeping the doors of each house open answers the latter purpose also. Any one who chooses can listen to the debates, and, moreover, the reporters of the daily papers make every one who reads their reports virtually a hearer of the debates and votes. By these means, the people watch their representatives.

But it may happen, in case of war or sedition, that the public safety requires secrecy; and there may possibly be some other cases in which it would not be well to have the proceedings made public at once. In such a case an exception may be made to the general rule of publicity, and either house may sit with closed doors, and refuse to publish its proceedings.

II. Separate adjournment.—

If either house could adjourn when it pleased, for any length of time, one house or the other might stop all business. Like a balky team, first one and then the other might refuse to pull. But as the members of our legislature are now paid a salary, instead of so much a day, it is their interest to finish business as fast as possible, instead of adjourning from day to day, to hinder legislation.

An adjournment for two or three days is frequently made, so that members can go home and stay over Sunday, or over some holiday. But for an adjournment of

more than three days, a joint resolution, passed by both houses, is necessary.

Section XI.—Sessions.

The Legislature shall meet at the seat of government, at such time as shall be provided by law, once in two years, and no oftener, unless convened by the Governor in special session; and when so convened, no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened.

[As amended Nov. 8, 1881.]

The time for the meeting of the legislature is the second Wednesday in January. The legislature may adjourn to meet at a later date, this being a continuation of the same session. But when it has finally adjourned it can only be convened by the governor in special session. In that case it can do no business except that named in the governor's call. Members receive no extra pay for adjourned or special sessions, but they do collect mileage for such sessions.

Section XII.—Restrictions on Members.

No member of the Legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

This provision is intended to prevent any influential member of the legislature having an office created or made more valuable, and then securing his own appointment or election to that office.

It is only civil office, however, which is thus restricted; for it might easily happen, as it did during our civil war, that the

services of some members of the legislature are needed in military offices.

A member cannot evade this provision by getting an office created and then resigning his place in the legislature to accept the office, because the prohibition covers the whole term for which he was elected.

Section XIII.—Restrictions on Eligibility.

No person being a member of Congress, or holding any military or civil office under the United States, shall be eligible to a seat in the Legislature, and if any person shall, after his election as a member of the Legislature, be elected to Congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

This is meant to make the members of the legislature entirely independent of federal influence. They are to represent this state—not the United States. A member of Congress, or a federal office-holder, would be likely to be influenced by the United States government.

There is a further provision (XIII, 3) which prohibits any United States officers (except postmasters), or the officers of any foreign power, from holding any office under this state. By comparing these two sections, we see that postmasters may hold any office under the state; but cannot be elected to the legislature. Strictly speaking, the members of the legislature are not *officers* of the state, but representatives.

Section XIV.—Vacancies.

The Governor shall issue writs of election to fill such vacancies as may occur in either House of the Legislature.

Vacancies in the legislature may occur through death, resignation or expulsion, or acceptance of a seat in Congress or a United States office. When a vacancy occurs

the governor must set a day for a new election. The person elected on that day holds office for the unexpired term only.

Section XV.—Privileges of Members.

Members of the Legislature shall in all cases, except treason, felony and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

This is a privilege granted to the members of all legislative bodies in this country and in Europe so that they shall not be prevented from attending to their duties as members for trivial causes.

Section XVI.—Legislative Freedom of Speech.

No member of the Legislature shall be liable in any civil action, or criminal prosecution whatever, for words spoken in debate.

This is also a privilege given to the members of all legislative bodies everywhere. There must be complete freedom of speech about measures and about men, in the debates of the legislature, so that the public good shall be best subserved.

Section XVII.—The Style of the Laws.

The style of the laws of the State shall be "The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:" and no law shall be enacted except by bill.

I. The style of the laws.—

All the laws of Wisconsin begin in these words: "The people of the state of Wisconsin, represented in

senate and assembly, do enact as follows." The form in which every law must begin, thus shows that the legislature is to represent the people of the state.

II. All laws by bill.—

The Congress of the United States frequently passes joint resolutions of both houses, which have the effect of laws. These must, however, be signed by the President in the same way as bills. But this is forbidden to the Wisconsin legislature by this section. All laws must be passed in the form of bills. But amendments to the Constitution are passed in the form of joint resolutions. So also are memorials to Congress. And either house, or both together, may pass any resolutions they choose that only express their opinions, without having the force of laws. Such resolutions, not being laws, do not need the governor's signature.

Section XVIII.—Private and Local Bills.

No private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.

This is to prevent three practices very common in Congress and in many state legislatures. The first is that of tacking some private or local bill, which could not pass if attention was called to it, on some other bill to which nobody has any objections, and thus slipping it through the various readings and votes before it is noticed. The second is the practice of combining sev-

eral private or local schemes in one bill, and thus each getting the support of all the members who would support any one of them. The third is the practice of slipping through objectionable measures by an innocent looking title that does not call attention to the main object of the bill.

The amendment to this article (Sections 31 and 32) stops a great deal of this special legislation, but this section still applies to all local or private bills that are not prohibited by that amendment.

Section XIX.—Bills May Originate in Either House.

Any bill may originate in either House of the Legislature, and a bill passed by one House may be amended by the other.

In Congress all bills for raising revenue must originate in the House of Representatives. This restriction is abolished for our state legislature, and bills may originate, that is, be first brought in and passed, in either house.

If a bill that passes one house is amended in the other, it is sent back to the house in which it originated, where the amendment is considered. If this house concurs in the amendment, both houses are then agreed on the bill, and it goes to the governor for his signature or veto. But if the first house does not concur in the amendment, a committee of conference may be appointed from each house, who meet and try to come to some agreement, until both houses either agree on something, or find that they cannot agree. In this latter case, of course, the bill is lost.

Section XX.— The Yeas and Nays.

The yeas and nays of the members of either House, on any question, shall, at the request of one-sixth of those present, be entered on the journal.

When the yeas and nays are called for, if one-sixth of those present concur in the call, the roll of members is called over by the clerk, and each member who is present answers in his turn, "aye" or "no." The names of those voting on each side of the question are recorded by the clerk in the journal, and published. The yeas and nays are very frequently called for, and the result is always published in the leading newspapers, so that any one who chooses to know, can always tell how any member of the legislature voted on any important question.

The yeas and nays *must* be taken in the following cases:

1. In each house, upon the passage of a bill creating a state debt. (VIII, 6.)

2. In each house, upon the passage of any financial measure. (VIII, 8.)

3. In each house, upon the passage of a bill over the governor's veto. (V, 10.)

4. In each house, upon the passage of a proposed amendment to the Constitution. (XII, 1.)

In these cases it is only upon the *final passage* of these measures that the vote must be taken by yeas and nays, and entered upon the journal.

5. But the yeas and nays may be called for upon any vote that is taken upon any question; and if the call is sustained by one-sixth of those present, the vote *must* be taken by yeas and nays and entered upon the journal. (IV, 20.)

6. All elections made by the legislature must be made by a *viva voce* vote, which is similar to the vote by yeas and nays, the only difference being that each member announces the name of the candidate for whom he votes, instead of saying "aye" or "no." In both cases the votes are entered upon the journal. (IV, 30.) The only exception to this is in case an election for governor should go to the legislature, in which case the election is by joint ballot. (V, 3.)

Section XXI.—Compensation of Members.

Each member of the Legislature shall receive for his services for and during a regular session the sum of five hundred dollars, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the Legislature, on the most usual route. In case of an extra session of the Legislature, no additional compensation shall be allowed to any member thereof, either directly or indirectly, except for mileage, to be computed at the same rate as for a regular session. No stationery, newspapers, postage, or other perquisites, except the salary and mileage above provided, shall be received from the State by any member of the Legislature for his services, or in any other manner, as such member.

[As amended Nov. 8, 1881.]

As the members now receive a stated salary, it is their interest to get through with business as soon as possible, and it is not their interest to have extra sessions.

The mileage is to be calculated upon the most usual route, to prevent members going a long distance out of their way on business or for pleasure, and getting mileage for that extra travel.

Stationery and other perquisites are forbidden, to prevent some abuses which had grown up by which members virtually added to their salary. By the amendment to this section the salary is increased and the perquisites cut off.

Section XXII.—Powers of County Boards.

The Legislature may confer upon the boards of supervisors of the several counties of the State, such powers of a local, legislative and administrative character, as they shall from time to time prescribe.

I. The organization of county boards of supervisors.—

The board of supervisors consists now in each county of the chairmen of the town boards and a supervisor elected by each incorporated village and by each ward of a city. They elect their own chairman, and the county clerk acts as their clerk.

II. Powers of county boards of supervisors.—

The legislature has given the boards of supervisors a great many powers of a local character, of which only a few of the most important can be here specified:

1. They have charge of all the buildings and other property of the county.

2. They examine and settle all accounts against the county.

3. They fix the salaries of county officers, within the limits prescribed by law.

4. They apportion taxes among the various towns, villages and cities in the county, and they levy all taxes needed to pay the expenses of the county government.

5. They may change the name of any person, town or village in the county.

6. They may change the boundaries of any town or village in the county.

7. They may incorporate literary, benevolent, charitable and scientific institutions.

8. They may grant charters for ferries and plank and turnpike roads, and fix the rates of toll.

9. They may take charge of the poor relief if they choose to

do so, erect a poor house and elect superintendents of the poor.

10. They may erect a county asylum for the chronic insane.

11. They may erect a workhouse for tramps and other minor offenders.

III. The sessions of county boards.—

All county boards hold their annual meetings on the Tuesday after the second Monday in November in each year. In many counties special or adjourned sessions are also held.

SECTION XXIII.—TOWN AND COUNTY GOVERNMENT.

The Legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable.

I. The system of county government.—

Like the state government, the county government consists of legislative, executive, administrative and judicial officers.

The board of supervisors is the county legislature, with the powers named in the notes to the last section.

The executive officers of a county are sheriff and coroner.

The administrative officers are clerk, treasurer, register of deeds, surveyor, district attorney and school superintendent.

The judicial officers are county judge, clerk of the circuit court, and one or more court commissioners.

II. The system of town government.—

The town government is simpler than either county, state or national. The legislature consists of all the

voters in the town, who meet on the first Tuesday in April, hear reports of officers, vote taxes for schools, for roads and bridges, for the poor, and for such other town purposes as may be necessary; make such orders and by-laws for governing the town as they think necessary, and elect the following officers by ballot:

1. A town board of supervisors, consisting of three members, who enforce all orders and by-laws of the town, audit all accounts, fill all vacancies in town offices, and act as trustees of the town property. The chairman, or in his absence one of the other supervisors, represents the town in the county board.

2. A town clerk.

3. A town treasurer, who collects taxes and keeps the money of the town subject to the order of the supervisors.

4. An assessor, who makes a list of all the taxable property in the town, with the value of it.

5. Four constables.

6. Four justices of the peace, of whom two are elected every year.

The town government is almost a pure democracy. The voters of each town assemble and discuss all matters of common concern, and decide them by a majority vote. But it is found to be impossible, even in so small a territory as a single town, for the voters in a body to do all the administrative, executive, and judicial business of the town. For this they have to elect officers; but the voters are themselves the legislature of the town.

III. The system to be uniform.—

This system of town and county government has been changed several times by the legislature. County superintendents of schools have been substituted for town superintendents; the composition of the county board of supervisors has been twice changed; but these changes have been uniform throughout the state. Whenever the legislature has given one county a system of government in any respect different from the rest, the supreme court has decided the act to be unconstitutional.

Section XXIV.—Lotteries and Divorces.

The Legislature shall never authorize any lottery, or grant any divorce.

I. Lotteries.—

The Constitution prohibits all lotteries. The legislature can neither itself legalize a lottery nor give power to any state, county, city, village or town officers to authorize a lottery. What the legislature cannot do itself, it might be constitutional for it to empower some one else to do, as is the case with divorces, which the legislature itself cannot grant, but which it has authorized circuit judges to grant. But in this case, the legislature is not allowed to *authorize* a lottery. To allow anybody else to give power for a lottery, would be just as much an authorizing of lotteries as if the legislature should itself grant licenses to them, only it would be doing it indirectly instead of directly.

II. Divorces.—

Divorces are granted by the circuit judges at the regular term of court, for the causes named in the laws. The legislature cannot itself grant any divorce, but it has passed a general law under which divorces can be granted by the courts, for certain specified causes.

Section XXV.—State Printing.

The Legislature shall provide by law, that all stationary required for the use of the State, and all printing authorized and required by them to be done for their use, or for the State, shall be let by contract to the lowest bidder, but the Legislature may establish a maximum price: No member of the Legislature, or other State Officer shall be interested, either directly or indirectly, in any such contract.

This is to prevent any frauds in the state printing. It cannot be given as a reward for party services, but must be given to the person who will do the work the cheapest. "A maximum price" means the highest price which will be given. The legislature may say that no more than so much will be paid in any case, to prevent a combination of printers to keep prices up. The actual prices paid for several years have been about half the maximum fixed by law.

Members of the legislature and state officers are forbidden to have any interest in contracts for state printing, so that there shall be no suspicion of any corrupt bargains, or fraud of any kind.

SECTION XXVI.— COMPENSATION OF OFFICERS AND CONTRACTORS.

The Legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into. Nor shall the compensation of any public officer be increased, or diminished during his term of office.

This is to make public officers and contractors entirely independent of the legislature. Having nothing to hope or fear in the way of salary, they will be more likely to do their work faithfully.

SECTION XXVII.— SUITS AGAINST THE STATE.

The Legislature shall direct by law in what manner and in what courts, suit may be brought against the state.

It has been provided by law that no person can sue the state for any claim he has against it, until he has presented it to the legislature and they refuse to allow it. He must notify the attorney general, who is the state's lawyer and who must defend the state in the trial of the case. The case is tried before the supreme court so far as the law of the case is concerned. If the facts have to be proved, the case is sent down to some circuit court where it is tried before a jury, who decide upon the facts, as in any civil suit, and their judgment is sent up to the supreme court, and a verdict rendered in accordance with the facts as decided by the jury, and the law as interpreted by the supreme court. Wisconsin is the only state which provides for suits against the state and for judgments to be given by the courts against the state.

Section XXVIII.—Oath of Office.

Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices, take and subscribe an oath, or affirmation to support the Constitution of the United States, and the Constitution of the State of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.

The oath is taken unless the officer has conscientious scruples against taking an oath; in that case, he simply affirms instead of swearing.

Section XXIX.—State Militia.

The Legislature shall determine what persons shall constitute the militia of the State, and may provide for organizing and disciplining the same, in such manner as shall be prescribed by law.

In theory, all the able-bodied males in the state, between the ages of eighteen and forty-five, who are not specially exempted, belong to the state militia. In actual practice, the state militia consists of the governor's staff and the companies and regiments of the Wisconsin National Guard.

Section XXX.—Elections by the Legislature.

In all elections to be made by the Legislature, the members thereof shall vote viva-voce, and their votes shall be entered on the journal.

The legislature elects the United States Senators from this state, and each house elects its own officers, except the president of the senate, when the lieutenant governor fills that place.

The elective officers of each house are: for the senate, the president *pro tem.*, chief clerk and sergeant-at-arms; and for the assembly, the speaker, chief clerk and sergeant-at-arms. (XIII, 6.) The other officers are appointed.

Viva voce means, literally, "with the living voice." A *viva voce* vote is one in which those who vote do so with their voice, not by ballot, or by a show of hands, or by rising.

The object of having a vote *viva voce*, and having each vote entered on the journal, is to make it public, and, therefore, as fair as possible.

Section XXXI.—Special Legislation Forbidden.

The Legislature is prohibited from enacting any special or private laws in the following cases: 1st. For changing the name of persons, or constituting one person the heir-at-law of another. 2d. For laying out, opening or altering highways, except in cases of state roads, extending into more than one county, and military roads, to aid in the construction of which lands may be granted by Congress. 3d. For authorizing persons to keep ferries across streams, at points wholly within this state. 4th. For authorizing the sale or mortgage of real or personal property of minors or others under disability. 5th. For locating or changing any county seat. 6th. For assessment or collection of taxes, or for extending the time for the collection thereof. 7th. For granting corporate powers or privileges, except to cities. 8th. For authorizing the apportionment of any part of the school fund. 9th. For incorporating any city, town or village, or to amend the charter thereof.

[As amended Nov. 8, 1892.]

All these cases can be better provided for, each by a general law which will cover all cases that will arise, than they would be by having the legislature pass a special law for every particular case.

For instance, it is a great deal better to give the business of changing people's names to the county board or the county judge, and not trouble the legislature with it. The result of special legislation always is to cause corruption and bribery of members and indiscriminate haste in passing laws, and to burden the statute books with a great number of private and local laws. The legislature is made the theater of contending local or private interests, to the exclusion of measures of great public utility, but in which no one is pecuniarily interested. The experience of this and other states has, therefore, shown that the public good will be best promoted by excluding as much special legislation as possible.

In addition to the nine cases named in Section 31, the Constitution forbids special laws in the following cases:

1. No bill of attainder can be passed; that is, a bill punishing particular persons by name. (I, 12.)
2. No preference can be given by law to any particular religious establishment or mode of worship. (I, 18.)
3. There can be but one system of town and county government. (IV, 23.)
4. The legislature can grant no divorce. (IV, 24.)
5. The state printing must be given to the lowest bidder. (IV, 25.)
6. Officers cannot receive extra pay. (IV, 26.)
7. The rule of taxation must be uniform. (VIII, 1.)
8. The supreme court has decided that acts of the legislature exempting particular persons or corporations from *any* general law are void.

Section XXXII.—General Legislation Required.

The Legislature shall provide general laws for the transaction of any business that may be prohibited by section thirty-one of this article, and all such laws shall be uniform in their operation throughout the State.

The legislature has provided general laws for all these cases.

ARTICLE V.

THE EXECUTIVE DEPARTMENT.

SECTION I.—EXECUTIVE POWER VESTED IN GOVERNOR.

The Executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be elected at the same time, and for the same term.

The executive power is vested in one man rather than in a committee or board, because experience has shown that one man who has the whole responsibility will be more efficient in carrying out the laws than several together would be. When laws are to be made, it is better to have them considered by a number of persons, so as to get the wisdom of all. But where laws are to be enforced, it is better to give all the responsibility to one man, so that what is to be done can be done speedily and thoroughly. Wisdom is needed in making the laws, and that is secured by having a large legislature; but energy is needed in carrying out the laws, and that is secured by having a single executive.

The governor of Wisconsin holds his office for two years. He can, however, be re-elected as many times as the people choose to make him governor.

The lieutenant governor is elected for the same term as his chief. This is because he may be called on to take his place.

SECTION II.— ELIGIBILITY.

No person except a citizen of the United States, and a qualified elector of the State, shall be eligible to the office of Governor, or Lieutenant-Governor.

I. Eligibility of the governor.—

The governor must be a citizen of the United States. But a foreigner who has been naturalized is eligible to the office of governor or lieutenant governor. Several naturalized foreigners have been elected governor or lieutenant governor of the state. A foreigner can vote, after he has been here a year, if he takes out his papers declaring his intention to become a citizen of the United States, but he cannot be elected governor, lieutenant governor, or judge of the circuit or supreme courts, until he becomes a citizen.

II. Eligibility of the lieutenant governor.—

The lieutenant governor must have the same qualifications as the governor, because he is frequently made acting governor by reason of the governor's sickness or absence from the state; and he would be made governor should the governor die, resign, or be removed upon an impeachment. He must have the same qualifications as the governor, because he may have to take the governor's place.

SECTION III.— ELECTION FOR GOVERNOR.

The Governor and Lieutenant-Governor shall be elected by the qualified electors of the State, at the times and places of choosing members of the Legislature. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more shall have an equal and

the highest number of votes for Governor or Lieutenant-Governor, the two houses of the Legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the highest number of votes, for Governor, or Lieutenant-Governor. The returns of election for Governor and Lieutenant-Governor, shall be made in such manner as shall be provided by law.

I. Election by the people.—

As the governor and lieutenant governor hold office for two years, it is only every other year that an election for governor and lieutenant governor occurs. This election is in the even years.

II. Election by the legislature.—The state Constitution provides that a plurality shall elect, so that it does not matter how many candidates there may be for the office of governor or lieutenant governor; the person who has the highest number of votes, although that may not be a majority of all, is elected. It is not at all likely, but it is barely possible, that there may be a tie vote. In that case, should it ever occur, the legislature must decide between the two or more candidates who received an equal and the highest number of votes. This must be done by joint ballot of the two houses of the legislature. In a joint ballot, both houses sit together as if they were one, and each member has one vote. If they do not choose the governor or lieutenant governor on the first ballot, they must keep on balloting until they do elect one or the other of the candidates. This must be the first business of the legislature after organizing. The word "forthwith" in this section requires that.

SECTION IV.—POWERS AND DUTIES OF THE GOVERNOR.

The Governor shall be Commander-in-chief of the Military and Naval forces of the State. He shall have power to convene the Legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the State. He shall communicate to the Legislature, at

every session, the condition of the State; and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws be faithfully executed.

I. General statement.—

This section contains a summary of the principal powers and duties of the governor except the power of pardon and the veto power; for which, see sections 6 and 10.

II. Military powers.—

The governor is commander-in-chief of the military and naval forces of the state of Wisconsin.

The state does not yet have any naval forces, although it is possible for it to have ships of war upon Lake Michigan and the Mississippi river, if Congress should consent to it. (U. S. Const., I, 102.) But the state has no use for a navy, being protected against foreign enemies by the whole power of the United States.

The military forces of the state consist, in time of peace, of the companies and regiments of the Wisconsin National Guard, which are organized under the state military laws. In time of war, the state military forces consist, in addition to the National Guard, of the volunteer and drafted soldiers who are enlisted for that special occasion. These are usually sworn into the service of the United States, and are then no longer under the authority of the governor, but under that of the President.

III. Convocation of legislature.—

The governor may call a special session of the legislature whenever, for any reason, their action is needed, and cannot be put off until the regular session.

In case of invasion, when the enemy's army has taken or is likely to take the capital, or when a contagious disease makes the capital a dangerous place, he can call the legislature, at either their regular session or a special one, to meet at such other place in the state as he thinks best.

IV. The governor's message.—

The governor's message is always sent at the opening of the regular session of the legislature.

The governor gives a brief report of the condition of the state, and sends it with the reports of all the different state officers and official boards. He gives, also, any recommendations that he pleases, which the legislature adopts or not, as it chooses. When he calls a special session, he must, of course, send a message to the legislature to inform them why he called them together, and what it is that he wishes to have them act upon at that special session.

V. Transact business of the state.—

The governor acts as representative of the state, and as such must transact all necessary business with the officers of the state. He also represents the state in all its business with other states, or with the United States, except where some other officer is expressly named to represent the state for certain purposes.

VI. Execute the laws.—

The governor is the executive of the state, and as such, he must see that the laws are faithfully executed.

He has no choice in this matter. Whether he thinks that a law is right or wrong, he must see that it is executed. If force is used to prevent the execution of a law, he can call on the militia and police forces, and if there should be serious resistance to them, he can call on the United States army to help him enforce the laws. (U. S. Const., IV, 4.)

Section V.—Salary of Governor.

The Governor shall receive during his continuance in office an annual compensation of five thousand dollars, which shall be in full for all traveling or other expenses incident to his duties.

[As amended Nov. 2, 1869.]

The salary of the governor of Wisconsin is five thousand dollars, which is intended to be enough to enable him to live in good style at the capital.

He also has the use of the Executive Mansion at Madison, rent free and furnished.

Section VI.—The Pardoning Power.

The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of a sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve, with his reasons for granting the same.

A *reprieve* is a delay in the execution of a sentence, especially a sentence of death. A *commutation* of a sentence is to change it for one less severe. A *pardon* is a reversal of the sentence; a pardon stops all further punishment, and restores the criminal to his civil rights. (See III, 2.)

From the nature of the case, the governor must have almost unlimited power to pardon; for no laws made beforehand can cover all the cases that may deserve pardon. Therefore, the governor's power to pardon must be discretionary. It is limited, however, in five points:

(1) The legislature prescribes the manner of applying to the governor for a pardon.

(2) In cases of treason the governor cannot pardon absolutely, but only with the concurrence of the legislature.

(3) In cases of impeachment he cannot pardon at all.

(4) And he must report to the legislature all the pardons he grants, and his reasons for granting them.

(5) He cannot pardon before trial and conviction.

The manner of applying for a pardon is very carefully prescribed by law, so that only those who deserve pardons shall get them.

In cases of treason the governor has no power to pardon. He can only suspend the sentence long enough for the legislature to act upon it. The governor may do this or not, as he chooses. But if he does suspend the sentence of a person convicted of treason, the legislature must act upon it in some way.

Section VII.—Vacancies in the Office of Governor.

In case of the impeachment of the Governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the Governor, absent or impeached, shall have returned, or the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of the Military force thereof, he shall continue Commander-in-chief of the Military force of the State.

The governor may go out of office, either temporarily or permanently. He goes out of office temporarily in case he is impeached (VII, 1), and permanently, should he, on the impeachment trial, be found guilty and removed from office by the senate. He goes out of office temporarily when he is so sick or so out of his right mind that he cannot discharge the duties of his office; and permanently in case of his death. He goes out of office temporarily whenever he goes out of the state; and permanently should he ever resign. When he goes out of office temporarily, the lieutenant governor acts as governor as long as he stays out of office; but when he goes out of office permanently, the lieutenant governor becomes governor for the rest of the two years for which they were both elected.

The exception is made, that whenever in time of war the governor goes out of the state to command the state troops, he shall still be governor, so far as being commander-in-chief is concerned. But he can only do this with the consent of the legislature; and the lieutenant governor will act as governor in every other respect.

SECTION VIII.—POWERS OF THE LIEUTENANT-GOVERNOR.

The Lieutentant-Governor shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy in the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or from mental, or physical disease become incapable of performing the duties of his office, or be absent from the State, the Secretary of State shall act as Governor, until the vacancy shall be filled, or the disability shall cease.

I. President of the senate.—

The lieutenant governor is president of the state senate. He has no vote on ordinary occasions, because he is not a member of the senate; but when there is a tie vote on any question, he has then a casting vote (or deciding vote); not as a member, but as the presiding officer of the senate. In this he differs from the speaker of the assembly, who has a vote on all questions, but no additional casting vote. In the assembly, as in the senate when presided over by a senator, if there is a tie vote the matter is lost, because it requires a majority to carry a question.

II. Acting governor.—

When the lieutenant governor is acting as governor, or if he is sick or absent, or if he should be impeached, or resign, or die, he cannot, of course, preside in the senate. The senate in that case elect one of their own number president *pro tempore* (for the time). The president *pro tempore* has a vote on all questions as a member of the senate, but has no casting vote.

When the governor and lieutenant governor are both incapacitated, the secretary of state, who is the next

highest elective officer of the state, acts as governor temporarily.

Section IX.

The Lieutenant-Governor shall receive during his continuance in office, an annual compensation of one thousand dollars.
[As amended Nov. 2, 1869.]

The intention of this section is to give the lieutenant governor a compensation for the time he actually spends. When he acts as governor he draws the salary of governor.

Section X.—How Bills Become Laws.

Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration two-thirds of the members present 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 the members present, 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 members voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

A bill becomes a law as soon as it is signed by the governor, or if he refuses to sign it, as soon as it is passed over his veto, and is deposited with the secretary of state with the signatures of the officers of the two houses.

When the governor vetoes a bill, his reasons for vetoing the bill must be given in writing, so that they can be copied upon the journal of the house that originated the bill. They *must* then vote upon it, and they *must* vote by ayes and noes, so that the vote of every member can be recorded. If two-thirds of the members present do not agree to pass it, that is the end of the bill. If two-thirds of the members present do vote for it, it goes to the other house, where the governor's objections are entered upon the journal as before, and a vote taken by ayes and noes, and recorded as before. If two-thirds of the members present do not vote for the bill, the bill is lost. If two-thirds of them do vote for it, it becomes a law.

The governor has only three days in which to consider a bill which has been passed by the legislature. In these three days Sundays are not counted, because no official business can be done on Sunday.

During the last three days of the session of the legislature the governor need not veto a bill that he does not wish to become a law. All he needs to do is not to sign it, and then it cannot become a law, even if two-thirds of each house are ready to vote for it.

There are four ways in which a bill may be lost:

1. It may not get a majority in the assembly.
2. It may not get a majority in the senate.
3. It may be vetoed by the governor, and not passed over his veto by the legislature.

4. It may be "pocketed" by the governor during the last three days of the session.

And there are three ways in which a bill may become a law:

1. It may pass both houses and be signed by the governor.

2. It may pass both houses, be vetoed by the governor, and be passed over his veto by a two-thirds majority of each house.

3. It may pass both houses, and the governor may fail to sign it within three days (when these are not at the close of the session).

ARTICLE VI.

ADMINISTRATIVE.

I. Administrative officers not a part of the executive.—

In the state government the administrative officers are not a part of the executive as in the United States government. They are either elected directly by the people or are appointed by the governor, but cannot be removed except for cause. The governor has no cabinet such as the President has.

II. Elected officers.—

The state administration now consists of the following elected officers:

1. *The Secretary of State.*
2. *The Treasurer.*
3. *The Attorney General.*
4. *The State Superintendent.*
5. *The Railroad Commissioner.*
6. *The Insurance Commissioner.*

These officers are elected every two years by the voters of the state on the same ticket with the governor and the lieutenant governor.

III. Appointed officers and boards.—

In addition to these there are several appointed officers and boards, who form a part of the state administration. A complete list of these together with the names of all clerks and employes in the state capitol, is given every two years in the Blue Book, a copy of which is furnished by the state to every school. As changes are made frequently by creating new offices or abolishing old ones, no attempt is made to give a list in this place, but the student is referred to the Blue Book.

SECTION I.—STATE OFFICERS.

There shall be chosen by the qualified electors of the State, at the times and places of choosing the members of the Legislature, a Secretary of State, Treasurer and Attorney General, who shall severally hold their offices for the term of two years.

All the state officers, including the governor and lieutenant governor, are elected for two years, and the election comes in the even years, together with the election for members of Congress, and with the election

for President in the leap years. No qualifications are required by this section for the administrative officers. But by a decision of the supreme court in the case of a sheriff, the principle of which would apply also to state officers, state and county officers must be voters, unless it is otherwise provided by law. County superintendents of schools may be women.

Section II.—The Secretary of State.

The Secretary of State shall keep a fair record of the official acts of the Legislature and Executive department of the State, and shall, when required, lay the same and all matters relative thereto, before either branch of the Legislature. He shall be ex-officio Auditor, and shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services yearly, such sum as shall be provided by law, and shall keep his office at the seat of government.

The secretary of state is not required to keep a record of the judicial department, because such a record is kept by the clerk of each of the courts.

As auditor he must examine the accounts of the treasurer and also examine the claims against the state. No bills against the state are paid except as he approves them.

Section III.—The Treasurer and Attorney General.

The powers, duties and compensation of the Treasurer and Attorney General shall be prescribed by law.

The state treasurer keeps the money and accounts of the state; and the attorney general is the lawyer for the state. They each have an office in the capitol at Madison.

Section IV.— County Officers.

Sheriffs, coroners, registers of deeds, district attorneys, and all other county officers, except judicial officers, shall be chosen by the electors of the respective counties, once in every two years. Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices. They may be required by law to renew their security from time to time; and in default of giving such new security, their offices shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, giving to such a copy of the charges against him, and an opportunity of being heard in his defense. All vacancies shall be filled by appointment, and the person appointed to fill a vacancy shall hold only for the unexpired portion of the term to which he shall be appointed, and until his successor shall be elected and qualified.

[As amended Nov. 7, 1882.]

I. Terms of office.—

All county officers, except county judges, are elected for two years in the even numbered years, when Congressmen and state officers are elected; and their term of office begins with the first Monday of January in the odd years.

II. Vacancies.—

All vacancies in county offices are filled for the unexpired term. Vacancies in the office of county superintendent are filled by appointment by the state superintendent; vacancies in the office of clerk of the court by appointment by the circuit judge; and all other vacancies by appointment by the governor.

III. Sheriffs.—

The office of sheriff is one of great responsibility, and the Constitution provides very carefully against its abuse.

1st. Sheriffs can hold no other office.

2d. They are ineligible *to the office of sheriff* for the next two years, and, therefore, cannot use their office to electioneer for re-election.

3d. They may be required to renew their security from time to time.

4th. The county cannot be made responsible for their acts.

5th. The governor may remove them at any time for cause.

The supreme court has decided that this section not only provides for the election of sheriffs, but determines that their powers and duties shall not be transferred to other officers.

IV. Other county officers.—

In addition to the county officers named in this section, the following are otherwise provided for:

Clerk of the circuit court (VII, 12).

County judge (VII, 14).

County clerk (by statute).

County treasurer (by statute).

County surveyor (by statute).

Superintendent of schools (by statute, under X, 1).

ARTICLE VII.

JUDICIARY.

SECTION I.—IMPEACHMENTS.

The court for the trial of impeachments shall be composed of the Senate. The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the State; but the party impeached shall be liable to indictment, trial and punishment according to law.

I. An impeachment trial.—

An impeachment trial is not a common criminal trial; it is a political trial. The offenses which can be tried are political offenses; the persons who can be tried are political officers, and the only punishments which can be imposed are political punishments. And, therefore, the court which tries them is the highest political body in the state. But the trial is carried on according to the usual forms and methods of higher courts of law, for the senate is then sitting as a court and not as a legislative body.

II. The power to impeach.—

The name, House of Representatives, evidently stands for the assembly, by an unusual piece of carelessness in the framers of the Constitution. The lower house of the legislature has the power of impeachment, because it represents the people more directly than any other part of the state government, being elected every year. An impeachment by the assembly answers to a presentment by a grand jury in criminal cases. It puts the person impeached upon his trial; but it does not necessarily follow because an officer is impeached that he is therefore convicted.

It is a common mistake to talk of the impeachment of an officer as if that were the same as conviction.

III. Who can be impeached.—

The persons who can be impeached are the civil officers of the state. Military officers cannot be impeached; but they can be tried by court martial and cashiered for corrupt conduct in office. Nor can members of the legislature be impeached. They are not officers of the state, but representatives of the people.

Senators and assemblymen can be expelled for the same offenses for which civil officers can be impeached.

Judges may be impeached, but they may also be removed by address. (VII, 13.)

IV. For what offenses.—

An officer may be impeached for corrupt conduct in office, or for crimes and misdemeanors which show that

he is not a fit person to be entrusted with office. Treason, bribery, gross neglect of duty, direct disobedience of the laws, and the like, would be considered corrupt conduct in office.

The crimes and misdemeanors for which an officer may be impeached are not exactly defined by the Constitution, and it was not intended they should be. The assembly must decide upon each case that comes up, whether it is worthy of impeachment or not; and the senate, whether the person impeached deserves to be removed from office or not.

V. The lieutenant governor does not preside.— The lieutenant governor presides over the senate at all impeachment trials, except when the governor is impeached. In that case, he has a direct interest in the result of the trial, for he would become governor if the governor should be removed; and, moreover, he is then acting governor, and cannot perform both functions at once. (V, 7.) When the governor is impeached, or if for any other cause the lieutenant governor does not preside, the senate elects a president from its own members.

VI. Impeachment suspends the governor and judges.— Under the United States Constitution impeached officers still continue to act in their offices until removed by the sentence of the senate, and the same rule holds in Wisconsin. An exception, however, is made with re-

gard to judicial officers, and also with regard to the governor. (V, 7.)

VII. Two-thirds required to convict.—

The state Constitution follows the United States Constitution in requiring a two-thirds majority to convict. Otherwise a partisan majority might impeach and remove a governor or other officer for party purposes.

VIII. What punishment can be inflicted.—

The persons who can be tried are officers of the state. They can be tried only for political offenses, and their punishment is political. It may only be removal from office, and it may also be disqualification for office ever after. This disqualification can be removed at any time by act of the legislature. If the offense is also a criminal offense as well as a political offense, the officer may be tried by the ordinary courts and punished at any time.

The state has, therefore, three methods of procedure against an unworthy officer:

1st. He can be impeached and removed from office, and also disqualified from holding any office under the state.

2d. If guilty of a criminal offense, he can be indicted, tried and punished like any other criminal.

3d. If he has wrongfully taken money or property from the state, it can be recovered by a civil process.

There has been but one impeachment trial in this state, that of a judge, and he was not convicted.

SECTION II.—COURTS OF THE STATE.

The judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme court, Circuit courts, Courts of Probate, and in Justices of the Peace. The Legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts, and shall have power to establish inferior courts in the several counties, with limited civil and criminal jurisdiction. Provided, that the jurisdiction which may be vested in municipal courts shall not exceed, in their respective municipalities, that of circuit courts, in their respective circuits, as prescribed in this Constitution: And that the Legislature shall provide as well for the election of Judges of the Municipal courts, as of the Judges of inferior courts, by the qualified electors of the respective jurisdictions. The term of office of the judges of the said Municipal and inferior courts shall not be longer than that of the Judges of the circuit court.

The courts of the state.—

There is only one set of courts in this state for both law and equity, not two sets of courts, as in England and in some of the older states. The courts of this state are as follows:

1. *The supreme court,* consisting of five justices elected for *ten* years each.

2. *The circuit courts,* consisting of one judge in each circuit, except in Milwaukee county where there are to be two circuit judges, each holding a separate court. All circuit judges are elected for *six* years, but not all at the same time.

3. *The inferior courts,* with judges elected in most cases for *four* years each, consisting of—

a. A county court in each county, generally with probate jurisdiction and very little more, but in some counties with almost as much jurisdiction in civil cases as the circuit court, in addition to probate powers.

b. A municipal court in several counties, with almost the jurisdiction of the circuit court, especially in criminal cases. One county has two municipal courts for two parts of the county.

c. A superior court in Milwaukee county, with two judges elected for *six* years each, sitting separately, and with substantially the same jurisdiction in civil cases as the circuit court. Owing to its size and the large amount of legal business, Milwaukee county thus has six judges of courts of record—two circuit judges, two superior judges, one municipal judge and one county judge (with probate powers only). Douglas county also has a superior court.

4. *Justice courts and police courts*, the former in every town, village and ward of a city, and the latter in some cities and villages. The term of office of justices of the peace and police justices is *two* years.

Section III.—Powers of the Supreme Court.

The Supreme court, except in cases otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State; but in no case removed to the Supreme Court, shall a trial by jury be allowed. The Supreme Court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas-corpus, mandamus, injunction, quo warranto, certiorari; and other original and remedial writs, and to hear and determine the same.

I. Original and appellate jurisdiction.—

The only cases in which the supreme court has original jurisdiction are those of suits against the state, and in issuing the original writs named below.

In all other cases suits must first be brought before some inferior court; and an appeal may be taken from its decision to the next higher court, and so on until it reaches the supreme court, where a decision is final.

The decisions of the supreme court in regard to the law of any case are always followed by all lower courts in all like cases, and are usually followed afterward by the supreme court, though not always. The decisions of the supreme court interpret the law, and, therefore, in a certain sense, the supreme court may be said to sometimes make laws. Where a law may be understood to mean several different things, every court must decide for itself what it really does mean; and as the supreme court is the final and highest authority, its decision decides finally the meaning of the law in dispute, unless that decision is afterward reversed by the supreme court itself.

A similar power is that of deciding laws to be unconstitutional. All the statute laws of the state are, of course, subject to the Constitution of the state, and to the Constitution and statutes and treaties of the United States. Upon any case coming before any court in the state, the plea may be made by the lawyers on either side, that a certain law or part of a law bearing on that case is unconstitutional, or that it is an encroachment on the supreme authority of the United States as expressed in its Constitution, statutes or treaties with foreign powers. If the plea is sustained by the court, and the decision is not reversed by a higher court, that law or part of law is ever after regarded in all courts as void and good for nothing. A decision in the supreme court is the highest authority upon the constitutionality of a state law.

II. The power to issue writs.—

The supreme court exercises this general control over all courts inferior to itself, by reason of the right of appeal and of writs of error (I, 21), and by reason of the writs named in this section.

In ordinary cases, however, the supreme court refuses to grant these writs, and refers the petitioners to the circuit court. It is only in exceptional cases that the supreme court will grant the writs named above.

These writs are all named from the Latin words with which they begin, for these writs were formerly in England issued in Latin. Those mentioned here are the most important writs used by the courts to secure justice, and are used as follows:

The writ of *habeas corpus* (you may have the body) commands the person to whom it is issued to produce the body of some person whom it is charged he holds in unjust confinement, before the court, and show cause why he should not be liberated.

The writ of *mandamus* (we command) commands officers and others to do certain things which it is their duty to do. For instance, if the secretary of state should refuse to give a certificate of election to a member of the legislature duly elected, and he could not take his seat because of it, the circuit or supreme court would issue a writ of *mandamus* and compel the certificate to be given.

A writ of *injunction* forbids certain things to be done, which if done, would cause injury which could not be remedied by the law, or commands certain things to be done, the neglect of which would cause an injury which could not be remedied.

A writ of *quo warranto* (by what warrant) is one which calls upon a person or corporation to show by what authority he or it exercises certain powers. For instance, on the first of January, 1856, the governor elect sued out a writ of *quo warranto* in the supreme court, against his predecessor, who refused to give up the office, and was put into the office by the power of the supreme court.

The question which of two contestants is entitled to hold a certain office has been several times tried before the supreme court by the use of this writ.

A writ of *certiorari* (to be certified of) is very much the same thing as a writ of error. When a higher court is certified or assured that justice is not being done in some case in a lower court, such a writ will be issued, and the case removed to the higher court. This writ compels the lower court to send up the record of a case that has been tried or is being tried in the lower court; and then the higher court tries the case upon the facts shown in the record.

SECTION IV.—ORGANIZATION OF THE SUPREME COURT.

The chief justice and associate justices of the supreme court shall be severally known as justices of said court with the same terms of office, respectively, as now provided. The supreme court shall consist of five justices (any three of whom shall be a quorum), to be elected as now provided. The justice having been longest a continuous member of the court (or in case of two or more of such senior justices having served for the same length of time, then the one whose commission first expires), shall be ex-officio the chief justice.

[As amended April 2, 1892.]

There have been four different organizations of the supreme court of this state:

1. From 1848 to 1853, the supreme court consisted of all the judges of the circuit courts meeting as one body, four being necessary to a quorum.

2. From 1853 to 1878, it consisted of a chief justice and two associate justices, elected for six years each, so that one of them was elected every two years.

3. From 1878 to 1889, it consisted of one chief justice and four associate justices, elected for ten years each, so that one of them was elected every two years.

4. Since 1889 it has consisted of five justices, elected as before, but the senior justice in time of service is chief justice.

The term of office of a justice of the supreme court begins on the first Monday in January, except when elected or appointed to fill a vacancy.

Section V* and VI.—Judicial Circuits.

The Legislature may alter the limits, or increase the number of circuits, making them as compact and convenient as practicable, and bounding them by county lines; but no such alteration or increase shall have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this Constitution and receive a salary not less than that herein provided for judges of the circuit court.

The legislature has frequently altered and increased the circuits. The counties composing the circuits and the judges of each and the times of holding court in each county can be learned from the Blue Book.

Section VII.—Circuit Judges.

For each circuit there shall be chosen by the qualified electors thereof one circuit judge, except that in any circuit composed of one county only, which county shall contain a population according to the last state or United States census of 100,000 inhabitants or over, the Legislature may, from time to time, authorize additional circuit judges to be chosen. Every circuit judge shall reside in the circuit from which he is elected, and shall hold his office for such term, and receive such compensation as the Legislature shall prescribe.

[As amended April 6, 1897.]

Every circuit judge must live in his own circuit, because there are a great many writs and processes that he may have to issue when he is not holding court, and it would be very inconvenient to go out of the circuit after him, to have a writ issued.

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*Section 5 arranged what should be the five judicial circuits, until the legislature should change them. It is no longer in force and is omitted.

Milwaukee county on account of its size has a special provision made for it, by which additional circuit judges may be elected in that county.

Circuit judges are elected for six years. Their term of office begins on the first Monday in January, except when elected or appointed to fill a vacancy.

Section VIII.—Powers of Circuit Courts.

The circuit courts shall have original jurisdiction in all matters civil and criminal within this State, not excepted in this Constitution, and not hereafter prohibited by law; and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and jurisdictions.

All important cases begin in some circuit court; small cases begin before a justice of the peace, or a police magistrate, or a county judge, and may be appealed to the circuit court, or carried up on a writ of error or of *certiorari*, if either party is aggrieved at a decision made in the lower court.

Each circuit court has jurisdiction in its own district, and in that only, except in two cases:

1st. Crimes and misdemeanors committed on Lake Michigan, Lake Superior, Lake Winnebago, and the Mississippi and St. Croix rivers, may be tried in the courts of any county that borders on them. (See comments on IX, 1.)

2d. Cases may be changed from one county to another, or one circuit to another, when it is likely that the trial would not be fair in the county or circuit where they were begun. This is called a change of venue. (See I, 7.)

Section IX.—Vacancies and Elections.

When a vacancy shall happen in the office of judge of the Supreme or circuit courts, such vacancy shall be filled by an appointment of the Governor, which shall continue until a successor is elected and qualified; and when elected such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for State or county officers, nor within thirty days either before, or after such election.

I. Vacancies.—

A vacancy may occur in a judgeship by the death or resignation of the judge, by his accepting any other office whatever, by his removing his residence, if a circuit judge, outside his circuit; and if a supreme judge, outside the state; or, by his removal from office by impeachment or address. If a judge is impeached by the assembly, he is suspended from his office until his trial is through. If not convicted, he resumes his office. In case of a vacancy, the governor appoints temporarily. At the next spring election a judge is elected for the unexpired balance of the term.

II. Elections.—

The state and county elections are held in the fall. The election of judges of the supreme court and circuit court are held in the spring at the town elections. The reason of this is, so that the political and party feeling which is rife at the state and county elections, should not influence the nomination or election of the judges. They ought to be elected for their fitness for the place, and not for their party services.

This has generally been the case and this state has had

a very able and impartial supreme court, and excellent circuit courts.

SECTION X.—SALARIES AND QUALIFICATIONS.

Each of the judges of the Supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office, or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them for any office, except a judicial office, given by the Legislature or the people, shall be void. No person shall be eligible to the office of judge, who shall not, at the time of his election, be a citizen of the United States, and have attained the age of twenty five years, and be a qualified elector within the jurisdiction for which he may be chosen.

I. Salaries.—

The salary of judges of the supreme court is now $5,000; that of judges of the circuit courts is $3,000, except in Milwaukee county, where it is $5,000, the county paying the extra $2,000. The salaries of these judges are paid from the state treasury with that exception.

Judges are forbidden to receive fees, because it might often influence their decisions upon cases before them, or at least give rise to the suspicion that the decisions were so influenced.

II. Candidacy for office.—

A judge should have no interests of any sort except to render strict and impartial justice; his whole time must be given to this. Therefore, he is not allowed to hold any other office, or even to receive votes for another, other than that of judge while he is judge.

This last provision is meant to apply to United States as well as to state officers; but it is void so far as it forbids a judge to be a candidate for President, Vice-President, Senator or Representative. The United States Constitution has prescribed the qualifications for these positions, and no state constitution can add to or take from them. It has been repeatedly settled by both houses of Congress, that the Constitution of the United States having fixed the qualifications of members, no additional qualification can rightfully be required by the states.

III. Qualifications.—

No other state officer need be more than twenty-one years old, but a judge must be twenty-five years old. He must have lived at least one year in the state to be a qualified elector. He must live in the state if a judge of the supreme court, and in his circuit if a circuit judge, to be a qualified elector in the jurisdiction for which he is chosen. If of foreign birth, he must have lived in the United States at least five years to be a citizen of the United States.

Section XI.—Term of Court.

The Supreme court shall hold at least one term, annually, at the seat of government of the State, at such time as shall be provided by law. And the Legislature may provide for holding other terms, and at other places when they may deem it necessary. A Circuit Court shall be held, at least twice in each year, in each county of this State organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

I. Terms of court.—

The terms of the supreme court are held twice a year at Madison in the capitol.

The terms of the circuit court are always held at the county seat of each county. Four terms are held in Milwaukee county and three in several other counties. Two terms are held in all the others.

Every county is now "organized for judicial purposes."

II. Judges hold court for each other.—

If for any reason a judge cannot hold court at a certain time and place, he may get some other judge to hold court for him at that time and place. This is occasionally necessary from the sickness of the judge or other cause.

Section XII.—Clerk of the Circuit Court.

There shall be a clerk of the circuit court chosen in each county organized for judicial purposes, by the qualified electors thereof, who shall hold his office for two years, subject to removal, as shall be provided by law. In case of a vacancy, the judge of the circuit court shall have the power to appoint a clerk, until the vacancy shall be filled by an election. The clerk thus elected or appointed shall give such security as the Legislature may require. The supreme court shall appoint its own clerk, and the clerk of the circuit court may be appointed clerk of the supreme court.

[As amended Nov. 7, 1882.]

The clerk of the circuit court in each county is elected for two years, with the other county officers, at the general election.

Where a county was not organized for judicial purposes, it was attached to some neighboring county for judicial purposes, and the clerk of the court in that county was clerk of the court for both, but there are now no such courts in this state.

The clerk of the court may be removed by the circuit judge at any time; but he must have a copy of the

charges against him, and an opportunity to be heard in his own defense.

The clerk of the supreme court is appointed by the court itself.

Section XIII.—Removal by Address.

Any judge of the Supreme or circuit court may be removed from office, by address of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein, but no removal shall be made by virtue of this section, unless the judge complained of shall have been served with a copy of the charges against him, as the ground of address, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journals.

This is a shorter method of removing a bad judge than by impeachment; but it requires a larger majority of the legislature to do it. A removal by impeachment requires a majority of all the members elected to the assembly, and two-thirds of all present in the senate. While a removal by address requires two-thirds of all the members elected to each house. But in case of a flagrant offense, this saves the long formalities of a trial. Substantial justice is provided for, in giving the accused judge a copy of the charges against him, and allowing him to be heard in his defense, and in requiring the members to vote by ayes and noes. The address is made to the governor, who thereupon removes the judge and appoints some one to fill the vacancy thus made. No judge has ever been thus removed.

Section XIV.—Probate Judge.

There shall be chosen in each county, by the qualified electors thereof, a Judge of Probate, who shall hold his office for two years, and until his successor shall be elected and qualified, and whose jurisdiction, powers and duties shall be prescribed by law. Provided, however, that the Legislature shall have power to abolish the office of Judge of Probate in any county, and to confer probate powers upon such inferior courts as may be established in said county.

The jurisdiction of probate judges extended to all cases of wills and inheritance of property, and guardianship of moneys, and administration of the estates of deceased persons. But all probate powers are now conferred upon the county judges, under Section 2.

Section XV.—Justices of the Peace.

The electors of the several towns, at their annual town meeting, and the electors of cities and villages, at their charter elections, shall, in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be for two years, and until their successors in office shall be elected and qualified. In case of an election to fill a vacancy, occurring before the expiration of a full term, the justice elected shall hold for the residue of the unexpired term. Their number and classification shall be regulated by law. And the tenure of two years shall in no wise interfere with the classification in the first instance. The justices, thus elected, shall have such civil and criminal jurisdiction as shall be prescribed by law.

I. Election.—

There are four justices of the peace elected in every town, two each year, at the spring election. If there is a vacancy for any cause, it is filled at the next spring election. In villages and cities their number differs, but they are all elected for two years and at the spring election.

II. Jurisdiction.—

Justices have jurisdiction anywhere in their county in civil suits in all cases where the value in controversy is small, and in criminal cases in minor offenses. The sentence of a justice of the peace can be appealed from to the next higher court in all cases.

Section XVI.—Tribunals of Conciliation.

The Legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township, and shall have power to render judgment, to be obligatory on the parties, when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment, or assent thereto in writing.

The legislature has established no regular tribunals of conciliation. But the law allows parties to a civil suit, who choose to do so, to submit their difference to arbitrators, chosen by both of them. These arbitrators are for that particular case a "tribunal of conciliation."

This section of the Constitution evidently means more than this, and the legislature has neglected its duty in not establishing these "tribunals of conciliation" in every township. If such tribunals were established, half the law-suits, with the expenses and hatred involved in them, would be saved.

Section XVII.—The Form of Writs and Processes.

The style of all writs and process shall be, "The State of Wisconsin"; All criminal prosecutions shall be carried on in the name and by the authority of the same; and all indictments shall conclude against the peace and dignity of the State.

Thus, every constable and justice of the peace represents the state of Wisconsin within his own jurisdiction. And the sovereign authority of the state is extended to every official action of the officers of the law throughout the state.

Every writ and process must begin with the words "The state of Wisconsin," and every indictment, after stating the offense with which the accused is charged, must conclude with the words "against the peace and dignity of the state of Wisconsin."

Section XVIII.—Tax on Suits.

The Legislature shall impose a tax on all civil suits commenced, or prosecuted in the municipal, inferior, or circuit courts, which shall constitute a fund to be applied toward the payment of the salary of judges.

A nominal tax of $1.00 is levied on every civil suit in these courts to conform to this section, but this tax does not go far toward paying the salaries of the judges.

Section XIX.—Law and Equity.

The testimony in causes in equity shall be taken in like manner as in cases at law, and the office of master in chancery is hereby prohibited.

The distinction between common law and equity is in form abolished by the code of the state, but still there are differences in substance well understood by lawyers, but too many and too intricate to admit of a definition or description in the limits of this work. The office of master in chancery in those states in which there are separate courts of equity, answers to the office of court

commissioner in courts of law. Under the Constitution, the court commissioners perform most of the duties of masters in chancery. The practice of law is greatly simplified by this, and many of the abuses of the English courts of chancery are abolished.

Section XX.—The Right to Have Lawyers.

Any suitor, in any court of this State, shall have the right to prosecute or defend his suit either in his own proper person, or by an Attorney or agent of his choice.

This is a similar provision for civil suits to that made for criminal cases in Article I, Section 7. Only in criminal cases a lawyer will be furnished by the court, if the defendant is too poor to pay one; but in civil cases each party must pay his lawyer or go without. But every man has a right to be his own lawyer if he chooses.

Section XXI.—Publication of the Laws.

The Legislature shall provide by law for the speedy publication of all statute laws, and of such judicial decisions, made within the State, as may be deemed expedient. And no general law shall be in force until published.

It would not be right to punish people for disobeying laws they have no means of knowing. The laws passed at each session are published first in the official state newspaper, and afterwards in nearly every newspaper in the state, and are also published as a book for the libraries of lawyers. No general law is in force till it is published in the official newspaper.

The decisions of the supreme court are regularly published in a series of volumes. These are published

because they have the force of law; being interpretations of the law which are accepted by all the courts of the state.

SECTION XXII.—THE CODE.

The Legislature, at its first session, after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to inquire into, revise, and simplify the rules of practice, pleadings, forms and proceedings, and arrange a system, adapted to the courts of record of this State, and report the same to the Legislature, subject to their modification and adoption; and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.

Such a commission was appointed, who reported a code of practice for the courts of this state, which embodies all the improvements upon the common law that are granted by this Constitution, and many more. This code was adopted, and all the practice of courts in this state is in accordance with it. The design of the code is to do away with technicalities in the practice of the courts as far as possible, except such as are needed to secure the ends of justice.

SECTION XXIII.—COURT COMMISSIONERS.

The Legislature may provide for the appointment of one or more persons in each organized county, and may vest in such persons such judicial powers as shall be prescribed by law. Provided, that said power shall not exceed that of a judge of a circuit court at chambers.

These officers are called court commissioners. By organized county is meant a county organized for judicial purposes. The judge of each circuit cannot be in every county in his circuit at once, and these court

commissioners act as his deputies. They cannot try cases, for that is reserved for the judge at the regular term of court. But they have all the powers of a court of chambers, that is, of a judge when he is not holding a regular court.

ARTICLE VIII.

FINANCE.

SECTION I.—TAXATION UNIFORM.

The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe.

Taxes should be uniform.—

To make taxation uniform three things are needed:

First, that the same things should be taxed and the same things exempt from taxation all over the state; which is the case.

Second, that the value of property should be assessed alike; and this is done as nearly as possible, though it is never done perfectly.

Third, that the percentage of taxation should be the same; which is the case. All state taxes are divided equally upon the assessed valuation of the whole state, all county taxes upon the assessed valuation of each county, and all town, village and city taxes upon the assessed valuation of the town, village or city.

Assessment and collection of taxes.—The taxes levied for the state are apportioned between the several counties in proportion to their equalized assessment. Then these state taxes

with the county taxes are in a similar way divided between the several towns, villages and cities in each county. To these are added the local taxes. The taxpayer each year pays his share of all these taxes to the treasurer of his town, village or city, who pays the state and county taxes over to the county treasurer, and he in turn pays the state taxes to the state treasurer.

The assessment for purposes of taxation has been previously made by the local assessor in each town, village or city. Any error in assessment may be corrected by the local boards. Variations in the scale of assessment between the several divisions of a county are equalized by the county board of supervisors. Similar variations between the counties are equalized by the State Board of Equalization.

Section II.—Appropriations.

No money shall be paid out of the treasury except in pursuance of an appropriation by law. No appropriation shall be made for the payment of any claim against the State, except claims of the United States and judgments, unless filed within six years after the claim accrued.

[As amended Nov. 6, 1877.]

I. Appropriations.—

That is, the state treasurer has no right to pay out any money, except as he is authorized to do so by the legislature. There are certain regular expenses of the state government for which an appropriation has been made once for all. These expenses are paid yearly without any special appropriation; other appropriations are made when needed.

II. Claims.—

The object of the amendment to this section was to cut off certain old claims which had already been paid.

Section III.—The Credit of the State.

The credit of the State shall never be given, or loaned, in aid of any individual, association, or corporation.

The Constitution wisely prohibits the state from lending its credit. Some of the states of our Union which have lent their credit to railroads and other corporations have had to pay the debts of these concerns, caused by their mismanagement and final bankruptcy.

Section IV.—Debts of the State.

The State shall never contract any public debt, except in the cases and manner herein provided.

The provisions of the Constitution which follow, relating to the state debt, are very wise. They have kept our state more free from debt than any other state of our Union.

Section V.—Annual Tax.

The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.

The ordinary expenses of each year must be paid by the year's taxes. They cannot be made a debt upon the state. But if, for any cause, there should be a deficit in any year, it must be paid by the taxes of the next year. The deficit must not go on increasing from year to year.

The ordinary expenses of the state government in most years are now paid by the license fees on railroads and some other corporations without any other tax. These license fees are really a tax on these corporations in return for which they are exempted from all taxation by counties, towns, villages or cities.

SECTION VI.—RESTRICTIONS ON DEBTS.

For the purpose of defraying extraordinary expenditures, the State may contract public debts, (but such debts shall never in the aggregate exceed one hundred thousand dollars.) Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed, or diminished, until the principal and interest of such debt shall have been wholly paid.

The power of the legislature to run the state in debt is very carefully guarded:

First. No other branch of the government can contract a debt.

Second. The debt can only be for extraordinary expenses, not for the regular annual expenses of carrying on the government.

Third. These debts altogether shall never exceed $100,000 at any one time.

Fourth. If the legislature authorizes such a debt, it must be by loan, and the purpose for which the money is to be borrowed must be distinctly stated in the loan.

Fifth. When the loan is voted in either house, three-fifths of the members must be present to make a quorum (Sec. 8), and a majority of all the members elected must vote for it;

that is, as the number now stands, in the assembly at least fifty-one members must vote for the bill; and in the senate at least seventeen.

Sixth. The vote must be taken by yeas and nays, and, of course, the vote of each member recorded on the journal, so that any one may know how he voted.

Seventh. Every law that makes a debt must provide for paying it, interest and principal, in five years.

Eighth. The payment of the debt cannot be put off, but the taxes must be raised every year that shall pay it in five years at the farthest.

These provisions of the Constitution have kept the state from having a heavy debt. There are few states of our Union whose credit is so good, and whose debt has been so small as Wisconsin. The state is now practically free from debt.

Section VII.—War Debts.

The Legislature may also borrow money to repel invasion, suppress insurrection, or defend the State in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the re-payment of the debt thereby created.

War is a very costly luxury, and the expenses of a war cannot be paid in the same year, as the ordinary expenses of the state government can. The expenses of a war must be paid mostly from borrowed money. Therefore, the Constitution allows the legislature to contract a debt for war expenses. But the war must be a defensive war. The state cannot carry on an offensive war; that is a power which the United States reserves to itself. But the state may be obliged to defend itself

against insurrection by rebels at home or invasion by a foreign foe, or may have to prevent invasion by defending itself beyond its own frontier. In that case the state can carry on war.

The legislature may borrow money to pay the expenses of a defensive war, and thus create a war debt. It may also borrow money, if need be, to pay the debt when it is due, and thus keep up a debt, which is really the same debt with the time of payment extended.

Section VIII.—The Vote on Financial Measures.

On the passage in either house of the Legislature, of any law which imposes, continues or renews a tax, or creates a debt, or charge, or makes, continues, or renews an appropriation of public, or trust money, or releases, discharges or commutes a claim, or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house shall, in all such cases be required to constitute a quorum therein.

Every vote upon a question in which money is concerned must be a matter of public record, so that any one can tell at any time how any member of the legislature voted upon any such question. Members feel their responsibility more when their votes are taken by yeas and nays and entered upon the journal.

Section IX.—No Debts Except by Legislature.

No scrip, certificate, or other evidence of State debt, whatsoever, shall be issued, except for such debts as are authorized by the sixth and seventh sections of this Article.

The state officers have no right to issue certificates of debt, or anything that shall bind the state in any way,

except they are authorized to do so by a vote of the legislature, and the legislature itself has no right to authorize any debt except such as are authorized by sections 6 and 7.

Section X.—Internal Improvements.

The State shall never contract any debt for works of Internal Improvement, or be a party in carrying on such works, but whenever grants of land or other property shall have been made to the State, especially dedicated by the grant to particular works of Internal Improvement, the State may carry on such particular works, and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

Works of internal improvement are such as railroads, canals, roads, bridges, the drainage of swamps, and the like. If the state should undertake such works as these it would be sure to run into debt; and it would be very possible that the money would not be wisely expended. Experience has shown that private persons and companies can do such work better than governments can.

An exception is made where grants have been made by the United States, or otherwise, to the state to carry on improvements. In that case the state is only a trustee to carry out the wishes of the government or persons who gave the property. The state has done this with the swamp lands given it by the United States. Half the proceeds of these are used to drain the other swamp lands.

ARTICLE IX.

EMINENT DOMAIN AND PROPERTY OF THE STATE.

SECTION I.—CONCURRENT JURISDICTION AND FREE NAVIGATION.

The State shall have concurrent jurisdiction on all rivers and lakes bordering on this State, so far as such rivers, or lakes shall form a common boundary to the State, and any other State, or Territory, now or hereafter to be formed, and bounded by the same: And the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways and forever free, as well to the inhabitants of the State, as to the citizens of the United States, without any tax, impost or duty therefor.

I. Concurrent jurisdiction.—

The state has sole jurisdiction within its own boundaries on land; no other state has any jurisdiction there. But where a river or lake makes a part of the boundary of the state, it is not easy to tell where the exact boundary is. It saves some trouble and settles some vexatious questions to give all the states that border on Lake Michigan, for instance, each the same jurisdiction anywhere on the lake. There is nothing to tax on the lake except the ships and boats, and these are taxed where they are owned, so that the only things that are affected by the question of jurisdiction, on the lakes and rivers, are the crimes and misdemeanors committed on these rivers and lakes. These may be tried in the courts of any state that border on the lake. So, also,

with Lake Superior. So, also, with offenses on the Mississippi river, when that river forms the boundary between this state and Minnesota or this state and Iowa; offenses committed on it may be tried in the courts of either state. This concurrent jurisdiction on Lakes Michigan and Superior, and all rivers that bound the state, is given by the acts of Congress which admitted this state and the neighboring states into the Union. This concurrent jurisdiction does not depend upon this section of the Constitution, but would exist whether it was mentioned in the Constitution or not.

The state has given the counties bordering on Lakes Michigan and Superior and the Mississippi river concurrent jurisdiction for offenses committed on these waters; and also to all the counties bordering on Lake Winnebago for all offenses committed on that lake.

II. Free navigation.—

The state of Wisconsin guarantees by this clause of the Constitution, that all the waters over which it has control shall be free highways. No tolls or duties are charged for any ship or goods owned by citizens of the United States. In practice it is scarcely worth while for the state of Wisconsin to levy tolls or duties on the few foreign ships that come into our ports; so that really the navigable waters of the state are free for the ships and commerce of all nations, so far as the state is concerned. The navigable waters of Wisconsin are thus free highways for the commerce of all the world,

subject only to the duties on foreign commerce which Congress imposes.

Section II.—Property of Territory Goes to State.

The title to all lands and other property which have accrued to the Territory of Wisconsin by grant, gift, purchase, forfeiture, escheat, or otherwise, shall vest in the State of Wisconsin.

This section belongs logically under Article XIV, which regulates the change of Wisconsin from a territory to a state, and substantially the same thing is given over again in one of the clauses of XIV, 4.

Section III.—Eminent Domain

The people of the State, in their right of sovereignty, are declared to possess the ultimate property, in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

I. Eminent domain.—

The right of eminent domain is claimed by all civilized governments. The state has the ultimate title to all land within its boundaries, and can take any land from its owner if it is needed for public purposes, only it must pay a fair price for it. (I, 13.) This right belonged to the United States, but when Congress admitted this state to the Union it gave this right of ultimate sovereignty to the state.

This right of eminent domain is exercised whenever the land needed for any public buildings cannot be purchased, whenever a road or street or a public park is laid out, and whenever a railroad or canal is constructed. In the latter case, the railroad or canal is a public highway; owned and constructed by a private corporation, it is true, but operated

for the public benefit, and liable to be controlled by law or to be taken from its owners, should they abuse their trust. Private property can be taken for railroads and canals only because they are *public highways*.

This right of eminent domain is the right of a sovereign—in this country the sovereign people—and it is meant to be used only for the public good. Highways for commerce are an absolute necessity of any civilized society. But for land transportation artificial highways must be made. These have now come to be railways, wherever railways can be built. These railways could not be built if they had to buy the right of way of each land owner at his own price. The state, therefore, very justly uses the right of eminent domain to take the land needed for railways at a fair price. This is done for the public good. But as the practical monopoly of the carrying trade enjoyed by the railways is very liable to be misused for the injury of the public, the state has rightly reserved the right to control these chartered monopolies (XI, 1), whenever it is necessary to do so for the public good. They are allowed to exercise the sovereign right of eminent domain only for the public good. But they do not have this privilege given to them without any duties in return. They are to use the great powers given to them for the public good. Should they fail to do so, the state can limit their powers or destroy them altogether. They are the servants of the people, the creatures of the state, not its masters and rulers.

II. Escheats.—

In accordance with the same right, when any one dies and leaves no heirs, his property goes to the state. Land only is spoken of in this section, but the same principle applies to all property.

Any property that thus escheats to the people goes into the school fund. (X, 2.)

ARTICLE X.

EDUCATION.

Section I.—The Supervision of Public Instruction.

The supervision of public instruction shall be vested in a State Superintendent, and such other officers as the Legislature shall direct. The State Superintendent shall be chosen by the qualified electors of the State, in such manner as the Legislature shall provide; his powers, duties and compensation shall be prescribed by law. Provided, that his compensation shall not exceed the sum of twelve hundred dollars annually.

The officers who have the supervision of public instruction are a superintendent of public instruction, and his assistants, and county and city superintendents. The state superintendent is chosen for a term of two years, at the same time as the other state officers, and appoints his assistants. County superintendents are elected for the term of two years, at the general election, like other county officers. They examine and license teachers, and have the general supervision of the schools and teachers in their respective jurisdictions. Several of the larger counties in the state are divided each into two superintendent districts. Many cities have their own systems of school supervision; generally under city superintendents, who may or may not be the principals of the high schools. The local supervision of schools is in the hands of the district boards, or, where the town system of schools has been adopted, in the hands of the town board of education.

SECTION II.—THE SCHOOL FUND.

The proceeds of all lands, that have been or hereafter may be granted by the United States to this State for educational purposes (except the lands heretofore granted for the purposes of a University) and all moneys, and the clear proceeds of all property that may accrue to the State by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the State where the purposes of such grant are not specified, and the five hundred thousand acres of land, to which the State is entitled by the provisions of an act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, one thousand eight hundred and forty-one; and also the five per-centum of the nett proceeds of the public lands to which the State shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate fund, to be called "The School Fund," the interest of which and all other revenues derived from the school lands, shall be exclusively applied to the following objects, to-wit:

First. To the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

Second. The residue shall be appropriated to the support and maintenance of Academies and Normal Schools, and suitable libraries and apparatus therefor.

I. The sources of the school fund.—

A very liberal provision is thus made for a school fund. The following are the sources of that fund:

1. Property which is forfeited or escheated to the state. Property escheats to the state when the owner dies without a will and without heirs.
2. Money paid for exemption from military duty.
3. The net proceeds of all penal fines.
4. All unspecified grants to the state.
5. Section sixteen in each township.
6. The five hundred thousand acres of land first given for

the Rock river canal, and afterward by consent of Congress given to the school fund.

7. The five per cent. of the net proceeds of the sale of all public lands, first given to the state to build roads and canals.

8. One-half the proceeds of the swamp lands given to the state by Congress in 1850 and 1855. This is now set apart as a normal school fund.

This fund is now quite large. See the Blue Book.

II. Apportionment of the school fund.—

The interest of the school fund is apportioned to the districts which have maintained school six or more months during the preceding year. The legislature has power under this section of the Constitution to furnish libraries and apparatus to the schools out of the school fund; but it has not chosen to do so. But school libraries are now required to be purchased by the towns.

III. State tax.—

There is also an annual state school tax of one mill on the dollar. This added to the income of the school fund makes a large sum annually to be distributed to those districts which maintain a legal school. This is apportioned to these districts according to the number of children of school age in each. The additional county tax required in Section 4 also adds considerably to the amount apportioned to the districts which maintain a legal school.

IV. Normal schools.—

The normal school fund, which comes from the sale of swamp lands given to the state by the United States

for that purpose, is administered by the Board of Regents of Normal Schools. Some additional appropriations are made by the legislature. The fund is used for conducting teachers' institutes and building and maintaining normal schools. Of these there are seven. This state has more normal schools in proportion to the population than any other state.

V. Teachers' institutes.—

Teachers' institutes are supported partly from the normal school fund, partly from additional appropriations by the legislature and partly from the fees paid by persons examined for teacher's certificates.

Section III.—Common Schools.

The Legislature shall provide by law for the establishment of District Schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition, to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein.

I. Reasons for our public schools.—

The experience of all modern nations shows that the people must be educated to make the nation strong or fit for freedom. The strength of the German empire is in her schools and universities. The weakness of some other nations of Europe is in the ignorance of the laboring classes. We thus need popular education to make and keep our nation strong, for "knowledge is power."

But we also need popular education to make and keep us fit for freedom. Experience has shown that no na-

tion can long be free unless it is intelligent. It is never the interest of the majority of the people, anywhere, to be oppressed by unjust laws or aristocratic privileges or corrupt governments. Where a whole people is intelligent even if ruled by no higher motive than self-interest, they will maintain their freedom against military usurpers, corrupt demagogues and wealthy classes and corporations. Those who govern any nation should be intelligent, and in this country, where the people are the rulers, the people should be intelligent.

Another reason for popular education is that the inherent rights of each individual to liberty and the pursuit of happiness (I, 1), guaranteed by this Constitution, may be secured to each one. Every citizen of this state should have a fair chance in life secured to him. And this can only be given by an education which shall fit him to perform intelligently the ordinary duties of life, and that shall give him the clue to all the knowledge possessed by the world. Then if all outside hindrances are removed from his pathway, as they are in this country, each person with this capital of a common school education to start with, can make his own place in life, and be "the architect of his own fortune."

II. The schools are free.—

The common schools in this country are free to all persons of school age, as they are not in any other country in the world. Here the tax-payers educate the chil-

dren of poor and rich alike, and the state thus offers every child an opportunity for a fair education.

III. No sectarian instruction.—

No sectarian instruction is allowed in our schools, for two reasons: first, because we have several different forms of faith in this state, no one of which has a right to have the powerful influence of the schools used in its favor; and second, because the experience of our country has shown that religion thrives best when it is independent of the state, asking no favors from it, and not being controlled by it.*

IV. The public school system.—

The public schools of the state are as follows:

1. *The district schools.* These are in the country, in the villages and in some cities. The people of each district, including women as well as men, meet on the first Monday in July and elect a district board of three, one each year for three years, except as vacancies are filled. The people also decide at the school meeting the amount of taxes to be raised, the length of term of school, the building or repairing of the school houses and other similar questions. Adjourned or special school meetings may be held at other times. The district board employ the teachers and determine the course of study and the rules for the gov-

* "Nor heeds the sceptic's puny hands,
While near her school the church spire stands;
Nor fears the blinded bigot's rule,
While near the church spire stands her school."
—WHITTIER.

ernment of the school. In cities and villages the district school has several teachers and is divided into departments, becoming thus a graded school. The district schools are under the supervision of county superintendents of schools, who examine and license the teachers and inspect the schools.

2. *The city schools.* In most cities a school board or city board of education takes the place of the district board. This is either elected by the people or appointed by the mayor or by the common council. The common council vote the money for the schools and the school board spends the money, employs the teachers and governs the schools. Usually each ward of a city has a school house of its own with a graded school, which is called a ward school. The city schools are each under the superivision of a city superintendent, who is usually appointed by the school board, but in some cities is elected by the people.

3. *The high schools.* A high school may be governed by the same board as the city or district schools. But a high school may also be established by a union of several districts to form a high school district. The state gives a certain appropriation each year to high schools on condition that they keep up certain courses of study and employ teachers with certain qualifications. Nearly all the high schools of the state comply with these conditions and accept these appropriations.

The high schools are under the supervision of the state

superintendent and his assistant, the high school inspector.

4. *The normal schools.* These are intended to prepare professional teachers. There is also a course in pedagogy at the university intended to give university students special instruction in the science of education. The high schools are encouraged to have classes in the theory and art of teaching.

5. *The state university.* The high schools prepare students for admission to the university.

Besides this system of public schools, supported by the state or by localities, there are a considerable number of colleges, academies and schools, which are supported by tuition fees or by endowments given to them. Many of them belong to some church, and give religious instruction, which the public schools cannot give.

SECTION IV.—SCHOOL TAX.

Each town and city shall be required to raise, by tax, annually, for the support of common schools therein, a sum not less than one half the amount received by such town or city respectively for school purposes from the income of the school fund.

Additional taxes are thus required to be raised by towns and cities. But the greater share of the school tax is raised by the school districts, each for its own school by vote of the people of the district.

Section V.—Apportionment of School Fund.

Provision shall be made by law, for the distribution of the income of the school fund among the several towns and cities of the State, for the support of common schools therein, in some just proportion to the number of children and youth resident therein, between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city, or town, for the year in which said city or town shall fail to raise such tax; nor to any school district for the year in which a school shall not be maintained at least three months.

The income of the school fund is distributed among the towns and cities of the state in proportion to the number of persons between four and twenty years old, in those districts which have maintained school for *six* months during the preceding year. This bonus is effective in inducing nearly every district in the state to maintain a legal school.

Section VI.—The State University.

Provision shall be made by law for the establishment of a State University, at or near the seat of State government, and for connecting with the same, from time to time, such colleges in different parts of the State, as the interests of education may require. The proceeds of all lands that have been, or may hereafter be granted by the United States to the State for the support of a University, shall be and remain a perpetual fund, to be called "The University Fund," the interest of which shall be appropriated to the support of the State University, and no sectarian instruction shall be allowed in such University.

I. Organization.—

The state university has been established at Madison. No colleges in other parts of the state have yet been connected with it. The university is governed by a board of regents, consisting of the state superintendent and

twelve persons appointed by the governor. It is open to both sexes, in all its departments, and provides free tuition for residents of Wisconsin. It is one of the great state universities of the interior states.

II. Income.—

In addition to the land grant given by Congress for the university, Congress in 1862 gave a land grant to each state in the Union for agricultural colleges. In this state this grant was given to the state university for an agricultural college connected with it. In addition a state tax is levied each year for the university, giving it a large income. See Blue Book.

III. No sectarian instruction.—

No sectarian instruction is allowed in the state university for the same reason that none is allowed in the common schools.

IV. Agricultural college.—

A large land grant was given by Congress to the states to establish in each a school of agriculture and the mechanic arts. In this state this has been made a department of the state university.

A system of farmers' institutes under the direction of the university was originated by Wisconsin, and has been imitated by other states. The effect of these two agencies has been to add very greatly to the prosperity of the state.

Section VII and VIII.—School Land Commissioners.

(7) The Secretary of State, Treasurer and Attorney General, shall constitute a board of commissioners for the sale of the School and University lands, and for the investment of the funds arising therefrom. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office.

(8) Provision shall be made by law for the sale of all School and University lands, after they shall have been appraised; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of the sale, the commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the Treasurer. The commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands, and to discharge any mortgages taken as security, when the sum due thereon shall have been paid. The commissioners shall have power to withhold from sale any portion of such lands, when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands, as well as all other University and School funds, in such manner as the Legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.

The school fund is thus cared for by a board of three state officers, under the direction of the legislature.

ARTICLE XI.

CORPORATIONS.

This article has been essentially modified by the amendments forbidding special legislation. These amendments prohibit the legislature from granting corporate powers or privileges by special laws, and also prohibit the legislature from incorporating any town, village or city, or amending the charter thereof, by a special law.

SECTION I.—CORPORATIONS SHALL BE UNDER GENERAL LAWS.

Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts, enacted under the provisions of this section, may be altered or repealed by the Legislature at any time after their passage.

I. Laws must be general.—

Corporate powers cannot now be granted by a special law. All laws made in regard to corporations must now be general, and apply to all similar corporations. No special charter can now be given to any corporations, either private or municipal.

II. But may be altered or repealed.—

Where the legislature of any state has once given corporate powers without reserve, they cannot be revoked

without the consent of the body which receives them.* For instance, if the legislature of this state had given some railroad extraordinary and even dangerous privileges, were it not for this section the legislature could not repeal or alter the charter that gave those extraordinary privileges except with the consent of the railroad. But by this section the legislature can always control all the corporations in the state.

SECTION II.—TAKING PRIVATE PROPERTY FOR PUBLIC USE.

No municipal corporation shall take private property for public use, against the consent of the owner, without the necessity thereof being first established by the verdict of a jury.

If the proper officers of a city, town or village cannot agree with the owner of property which they take for public use, as, for instance, when a street is opened, the owner can call for a jury, who shall decide what the property is worth.

SECTION III.—ORGANIZATION OF MUNICIPAL CORPORATIONS.

It shall be the duty of the Legislature, and they are hereby empowered, to provide for the organization of cities and incorporated villages, and to restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in

* In the celebrated case of Dartmouth College against Woodward, in which Daniel Webster was attorney for the plaintiff, it was decided by the supreme court of the United States that charters are in the nature of a contract between the government and the corporation and consequently cannot be altered or repealed by the government without the consent of the corporation, under the United States Constitution, article 1, section 10, which forbids states to pass laws impairing the obligations of contracts. (Wheaton's reports of the United States supreme court, vol. VI, p. 518.)

But when the constitution of a state reserves the right of repeal, as in this section, all such contracts are made and accepted by the corporations with the right of repeal or amendment by the legislature as one of the implied conditions of the contract itself, which therefore can be amended or repealed by the legislature at its pleasure. (Wis. Reports, vol. III, pp. 287 and 611.)

contracting debts by such municipal corporations. No county, city, town, village, school district or other municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to any amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, town, village, school district or other municipal corporation, incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on said debt as it falls due, and, also, to pay and discharge the principal thereof within twenty years from the time of contracting the same.

[As amended Nov. 3, 1874.]

I. Restrictions on municipal debts.

Under the amendment to this article, municipal corporations of all kinds are prohibited from running into debt to more than five per cent. of their taxable property, and are required to pay all debts within twenty years. Many counties, cities and towns have been and still are loaded down with enormous debts, incurred to build railroads. The object of this amendment is to prevent this in future.

II. Classification of cities.—Cities are divided into four classes:

1. The first class comprises cities with a population of one hundred and fifty thousand or over. Milwaukee is the only such city in Wisconsin. Consequently a general law for the government of cities of the first class is really a special law for Milwaukee.

2. The second class comprises cities with a population of forty thousand or over and under one hundred and fifty thousand. There are no such cities at present in Wisconsin.

3. The third class comprises cities containing ten thousand or over and under forty thousand.

4. The fourth class comprises cities containing less than ten thousand population. When a village reaches the population of fifteen hundred, by the state or United States census, it becomes a city of the fourth class.

There is a general law for the government of each class of cities. But most of the cities were incorporated under special charters before the Constitution was amended to prevent this. Any such city may, however, by a vote of its common council, adopt the general law for the government of cities, and all new cities must be governed by the general law.

III. City government.—Officers of cities of the first class are a mayor, two aldermen from each ward, together constituting a common council, a treasurer, a comptroller, an attorney, clerk, engineer, tax commissioners, an assessor for each ward, a board of public works, a school board, a board of commissioners of the public debt, a board of health, one or more city physicians, a chief of police, a chief engineer of the fire department, one or more harbor masters, a supervisor for each ward, a justice of the peace and a constable for each ward, policemen, bridge tenders and street commissioners.

Officers of other cities are a mayor, two aldermen for each ward, one justice of the peace, one constable and one supervisor for each ward, treasurer, clerk, comptroller, attorney, assessor, engineer, chief of police, city physician, street commissioner, chief of fire department, board of public works, board of school commissioners, and one or more policemen. The council may dispense with some of these offices or create others.

Cities under special charters have substantially the same organization.

The mayor, treasurer, comptroller, assessor, aldermen, justices of the peace and supervisors are elected by the people. The other officers are appointed by the mayor or by the council. The term of office is one year, but in some cities is two years. Justices of the peace have a term of two years everywhere under the Constitution.

In cities of the first, second and third classes the police-

men and firemen are appointed by a board of police and fire commissioners, consisting of four persons, not more than two of whom can belong to the same political party. The appointments of policemen and of firemen are on examination and for merit alone, and are on the same general plan as the appointments to the classified civil service of the United States.

In cities of the first and second class there is a classified civil service for all subordinate positions on the same general plan as that of the United States.

IV. Organization of villages.—At first all villages were organized under special charters. But since the amendment forbidding special legislation, all new villages have been organized under the general law and most of the older villages have either become cities or have reincorporated under the general law, so that there are not many villages now under special charter.

The elective officers of a village under the general law are a president, six trustees, a clerk, a treasurer, a supervisor, a marshal and a constable, all elected for one year, and two justices of the peace, elected for two years each, one each year. A village may also have a police justice and an assessor.

Sections IV and V.—Banks.

(4) The Legislature shall not have power to create, authorize or incorporate, by any general, or special law, any bank, or banking power or privilege, or any institution or corporation having any banking power or privilege whatever, except as provided in this article.

(5) The Legislature may submit to the voters, at any general election, the question of "bank" or "no bank," and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of Banks, then the Legislature shall have power to grant Bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders. Provided, that no such grant or law

shall have any force or effect until the same shall have been submitted to a vote of the electors of the state, at some general election, and been approved by a majority of the votes cast on that subject at such election.

The amendment which constitutes Article IV, Sections 31 and 32, of this Constitution, annuls so much of these two sections as allow special laws or charters to banks. All banking laws must be general.

Practically, the system of state banks established under this section to issue bank bills, was annulled by the United States when Congress established the system of national banks, in 1863. There are still state banks with other banking powers, but they do not issue bills.

The United States does not prohibit state banks of issue, and such banks could lawfully be organized in this state now, under the general banking law; but the United States does tax the circulation of all state banks ten per cent., so that they are no longer profitable to carry on; and, therefore, there are no longer any banks in this state or any other state of our Union which issue bank bills under state laws.

The power to issue bills needs to be carefully guarded. Bank bills circulate as money, and are continually passing from hand to hand. Very few people can have the information by which they can tell which are good and which are bad among a great number of banks situated in many states of the Union. It was therefore right for the state to regulate the whole matter of banking, and throw around it such restrictions as would make

bank bills always good, and convertible into gold and silver.

This was a subject on which there were so many opinions, and one of such importance, that the convention which framed the Constitution did not attempt to settle it, but left it for the people at the general election in 1851, when it was decided in favor of having banks. A general banking law was passed by the next legislature, and submitted to the people at the general election in 1852, and approved by them. Several amendments have since been made, and each was voted on by the people. Several special charters have also been granted to particular banks, which have been approved of by a vote of the people. These votes were what would now be called a referendum.

Happily, the United States has now taken the whole matter of the currency into its own hands. We now have a national currency, composed of the United States notes, and the notes of the national banks chartered by Congress. These are guaranteed by the United States, so that everyone who takes one of these bills may be sure that his money is as good as the United States itself. The only banks in this state which now issue bills are national banks. But there are many corporations still in existence with banking powers in every respect, except that of issuing bills. They are supervised by a state bank examiner.

ARTICLE XII.

AMENDMENTS.

SECTION I.—AMENDMENTS, HOW MADE.

Any amendment, or amendments to this Constitution may be proposed in either house of the Legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment, or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election; and shall be published for three months previous to the time of holding such election, and if, in the Legislature so next chosen, such proposed amendment, or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment, or amendments, to the people in such manner, and at such time, as the Legislature shall prescribe; and if the people shall approve and ratify such amendment, or amendments by a majority of the electors voting thereon, such amendment, or amendments, shall become part of the Constitution. Provided, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

The process of amending the Constitution is as follows:

1. An amendment may be proposed in either house.
2. The vote must be taken by yeas and nays.
3. The proposed amendment must be agreed to by a majority of all the members elected to each house.
4. It must be published for three months before the next general election.
5. It must be agreed to by a majority of all the members of each house in the next legislature.

6. It must be submitted to the people.

7. It must have a majority of all votes cast on that subject.

Ample opportunity is thus given for discussion, and it is not likely that a very unwise measure could run the gauntlet of all the criticism in the legislature and in the newspapers.

It is not necessary that a proposed amendment should have a majority of all the votes cast at that election; but only that it shall have a majority of all cast on that subject.

All amendments to this Constitution have been made in this way.

Section II.—Constitutional Convention.

If at any time a majority of the Senate and Assembly shall deem it necessary to call a convention to revise or change this Constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the Legislature. And if it shall appear that a majority of the electors voting thereon, have voted for a convention, the Legislature shall, at its next session, provide for calling such convention.

It may well happen that the people of the state shall become dissatisfied with the Constitution, and wish to have it revised or changed entirely for a new one. In this case, it is better to have a constitutional convention called for that special purpose, than to take up the time of the legislature with it. The process of calling a convention to revise or change the Constitution is as follows:

1. The legislature may propose a convention by a joint resolution.

2. The people vote on it at the next general election.

3. If a majority of all the votes cast *on that subject* are for a convention, the next legislature provides for calling it.

4. This convention will be elected by the people at such time and in such a way as the legislature may provide.

5. The convention need not submit its action to the people. A Constitution made by such a convention is binding without a vote of the people; for the people have delegated their sovereign power to the members of the convention. But if the legislature in their call of the convention have prescribed that the Constitution shall be submitted to a vote of the people, then the convention was elected with that limited power of *proposing* a new or revised Constitution, but without the power of *making* it. In that case a vote of the people is necessary, or, if the convention elected with full powers think best, nevertheless, to submit their work to the people, they have a right so to do; and in that case the new or revised Constitution is not binding until ratified by the people's vote.

No constitutional convention has yet been called under this section. The amendments that have been made thus far have all been made in the way prescribed in the previous section.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS.

SECTION I.—GENERAL ELECTIONS.

The political year for the state of Wisconsin shall commence on the first Monday in January in each year, and the general election shall be holden on the Tuesday next succeeding the first Monday in November. The first general election for all state and county officers, except judicial officers, after the adoption of this amendment, shall be holden in the year A. D. 1884, and thereafter the general election shall be held biennially. All state, county or other officers, elected at the general election in the year 1881, and whose term of office would otherwise expire on the first Monday of January in the year 1884, shall hold and continue in such offices respectively until the first Monday in January in the year 1885.

[As amended Nov. 7, 1882.]

The object of the amendment was to secure biennial elections. Before this the state officers and some of the county officers were elected in the odd years, and Representatives in Congress and most of the county officers in the even years. By the amendment, all United States, state and county elections, except for judges, come in the even years. The state and county officers thus elected enter upon their offices the first Monday in January of every odd year. The state officers elected in 1881 had their term extended to three years by this amendment.

Section II.—Dueling.

Any inhabitant of this State who may hereafter be engaged, either directly or indirectly in a duel, either as principal or accessory, shall forever be disqualified as an elector, and from holding any office under the Constitution and laws of this State, and may be punished in such other manner as shall be prescribed by law.

Dueling has scarcely ever been attempted in this state. By this section all duelists are punished by being disfranchised and disqualified from holding office.

Dueling is also punished with imprisonment in the state prison, and if any one is killed in a duel it is considered as murder in the second degree and punished accordingly.

Section III.—Disqualifications for Office.

No member of Congress, nor any person holding any office of profit or trust under the United States (Postmasters excepted) or under any foreign power; no person convicted of any infamous crime in any court within the United States; and no person being a defaulter to the United States, or to this State, or to any county, or town therein, or to any State, or Territory within the United States, shall be eligible to any office of trust, profit, or honor in this State.

This section prohibits different classes of persons from holding office in the state, for very different reasons.

1. Members of Congress and officers of the United States are prohibited from holding office in this state while they are Congressmen or federal office holders, because their duty to the general government would be likely to interfere with their duties to the state. Members of Congress are not United States officers in the

strict legal sense of the word, and therefore they are named separately.

Postmasters are excepted; they can hold office under the state, but they cannot be members of the legislature. (IV, 13.)

2. Persons holding office under any foreign power are prohibited from holding office here, because they would not be likely to serve two separate governments with loyalty; and cases might easily arise in which the interests of the two governments, and the duties of the two offices, would be opposite.

Therefore, officers of foreign powers, even when they are our own citizens, as consuls frequently are, are prohibited from holding offices in Wisconsin.

3. No person convicted of an infamous crime anywhere in the United States can hold office in Wisconsin, because he has shown that he is not worthy of trust or honor; and the state would disgrace itself by putting a convicted criminal into a place of honor or trust. The person must have been convicted of the crime in some court; for the law presumes every man innocent till he is proved to be guilty.

4. No defaulter to any branch of our government anywhere in the United States can hold office, and for the same reasons.

SECTION IV.—THE GREAT SEAL.

It shall be the duty of the Legislature to provide a great seal for the State, which shall be kept by the Secretary of State, and all official acts of the Governor, his approbation of the laws excepted, shall be thereby authenticated.

All appointments to office, all patents for land, all pardons, etc., must have not only the signature of the governor, but the seal of the state, because they are public acts, done by the governor as the executive of the state. His approbation of the laws is not an executive act, but a legislative one, and, therefore, does not need the seal of the state.

SECTION V.—PERSONS RESIDING ON INDIAN LANDS.

All persons residing upon Indian lands within any county of the State, and qualified to exercise the right of suffrage under this Constitution, shall be entitled to vote at the polls which may be held nearest their residence, for State, United States or County officers. Provided, that no person shall vote for county officers out of the county in which he resides.

The Indian lands are not organized into towns, and, therefore, persons living on them are not in any voting precinct. But it would not be fair to deprive them of a vote for other than town officers, as they would be if the rule had no exception, that every elector must vote in the town, village or ward where he resides. Therefore, such qualified electors may vote at the nearest polls for Presidential electors, for Congressmen and for state officers, and also for county officers, if they live in the county where they vote.

Section VI.—Officers of the Legislature.

The elective officers of the Legislature, other than the presiding officers shall be a chief clerk and a sergeant-at-arms, to be elected by each house.

The lieutenant governor is president of the senate. When he does not preside, for any reason, the senate elects a president from its own members. The assembly elects a speaker from its own members. The chief clerk and the sergeant-at-arms of each house are elected by each house, but are not members and have no vote. The other officers and attendants are appointed. The chief clerk appoints his own assistants and the sergeant-at-arms appoints the postmaster, doorkeepers and firemen. The messengers are appointed by the speaker. The elections are all *vica voce*, and the votes of each member are entered on the journal. (IV, 30.)

Section VII.—Division of Counties.

No county with an area of nine hundred square miles, or less, shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

It is supposed that the area of nine hundred square miles, or twenty-five congressional townships, is small enough, in ordinary cases, for a county. But if the people of the county are willing to divide the county, there is no good reason why they should not.

In the case of the division of Washington county, and the formation of Ozaukee county, the supreme court decided that in computing the area of a county, bodies of water lying

within its boundaries are considered parts of the county, and that Washington county could be divided, because it then included a part of Lake Michigan.

The supreme court has decided that it is competent for the legislature to enlarge a county which contains less than nine hundred square miles, by adding to it part of an adjoining county containing a larger area, so that each of them shall be large enough to be divisible, without submitting the question to the voters; and by a subsequent act at the same session, to form a new county out of territory taken from such adjoining counties, without submitting the question of such division to the voters. This was in the case of the division of Chippewa and Buffalo counties, and the formation of Trempealeau county, in 1864. The legislature has since then several times evaded this section in the same way.

Section VIII.—Changes of County Seats.

No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the voters of the county, voting on the question, shall have voted in favor of its removal to such point.

No special law can be passed for locating or changing any county seat (IV, 31), but a general law has been passed which covers this whole subject. Before a county seat can be changed two things must be done. The point to which it is to be moved must be definitely fixed, and a majority of all the votes cast on that question must be for changing it to said definite point.

Section IX.—Officers Elected or Appointed.

All county officers whose election, or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment, is not

provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Nearly all the officers named above are elected by the people. The object of this section is to forbid the practice, usual in a few states, of having local officers appointed by the governor or by the legislature. This effectually secures local self-government in this state.

Section X.—Vacancies.

The Legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this Constitution.

Any office is made vacant by the death or resignation of the person holding it, or by his removal from the state, or by his accepting an office from a foreign power, or from the United States. All civil officers can be removed by impeachment, and some officers can be also removed in a shorter way, as judges by address, and most county officers by the governor. When an officer is so removed his office is vacant. Vacancies are filled in various ways. A vacancy in the office of governor is filled by the lieutenant governor immediately, and if he also goes out of office, by the secretary of state. (V, 7 and 8.) Vacancies in the judicial and administrative offices of the state are filled by appointment of the gov-

ernor till the next election. Vacancies in the legislature are filled by special election, called as soon as possible. Vacancies in the office of superintendent of schools are filled by appointment of the state superintendent. Vacancies in town offices are filled by special election. Vacancies in district boards are filled by appointment by the board or by the town clerk, till the next regular school meeting.

ARTICLE XIV.

THE CHANGE FROM TERRITORY TO STATE.

This article detailed the things necessary to be cared for in the change from territory to state, as can be seen by referring to the text. As these were temporary in their nature we omit all consideration of them here.

FINIS.

CONSTITUTION OF THE STATE OF WISCONSIN.

[The text of the State Constitution given below is taken from the original document now deposited with the secretary of state, and the text of each amendment is taken from the enrolled joint resolution deposited with the secretary of state. In each case the exact spelling, punctuation and capitalization have been retained, even where, as in some instances, there is obviously an error, as in the omission of "States" from "United States."]

PREAMBLE.

We, the people of Wisconsin, grateful to Almighty God for our freedom; in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare; do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All men are born equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness: to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

Section 2. There shall be neither slavery, nor involuntary servitude in this State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

Section 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions, or indictments for libel, the truth may be given in evidence, and if it shall appear to the jury, that the matter charged as libellous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Section 4. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

Section 5. The right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases, in the manner prescribed by law.

Section 6. Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

Section 7. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment, or information, to a speedy public trial by an impartial jury of the county or district wherein the offence shall have been committed; which county or district shall have been previously ascertained by law.

Section 8. No person shall be held to answer for a criminal offence, unless on the presentment, or indictment of a Grand Jury, except in cases of impeachment, or in cases cognizable by Justices of the Peace, or arising in the Army, or Navy, or in the militia when in actual service in time of war, or public danger; and no person for the same offence shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself; All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences . . . . . when the proof is evident, or the pre-

sumption great; and 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.

SECTION 9. Every person is entitled to a certain remedy in the laws, for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

SECTION 10. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

SECTION 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath, or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

SECTION 12. No bill of attainder, ex-post facto law, nor any law impairing the obligation of contracts shall ever be passed, and no conviction shall work corruption of blood, or forfeiture of estate.

SECTION 13. The property of no person shall be taken for public use, without just compensation therefor.

SECTION 14. All lands within the State are declared to be allodial, and feudal tenures are prohibited;—Leases and grants of agricultural land, for a longer term than fifteen years, in which rent, or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land, hereafter made, are declared to be void.

SECTION 15. No distinction shall ever be made by law, between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property.

SECTION 16. No person shall be imprisoned for debt, arising out of, or founded on a contract, expressed or implied.

SECTION 17. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure, or sale for the payment of any debt, or liability hereafter contracted.

SECTION 18. The right of every man to worship Almighty God, according to the dictates of his own conscience, shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments, or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious, or theological seminaries.

SECTION 19. No religious test shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law, or equity, in consequence of his opinions on the subject of religion.

SECTION 20. The military shall be in strict subordination to the civil power.

SECTION 21. Writs of error shall never be prohibited by law.

SECTION 22. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

ARTICLE II.

BOUNDARIES.

SECTION 1. IT is hereby ordained and declared, that the State of Wisconsin doth consent and accept of the boundaries prescribed in the act of Congress entitled "An act to enable the people of Wisconsin Territory to form a Constitution and State government, and for the admission of such State into the Union," Approved August sixth, one thousand eight

hundred and forty-six, to-wit:—Beginning at the north-east corner of the State of Illinois—that is to say; at a point in the centre of Lake Michigan, where the line of forty two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menominie river; thence up the channel of the said river to the Brulè river; thence up said last mentioned river to Lake Brulè; thence along the southern shore of Lake Brulè in a direct line to the centre of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicholle't's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the centre of the main channel of that river to the north-west corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois to the place of beginning, as established by "an act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States", Approved April 18th 1818. Provided, however, that the following alteration of the aforesaid boundary be, and hereby is proposed to the Congress of the United States as the preference of the State of Wisconsin, and if the same shall be assented and agreed to by the Congress of the United States, then the same shall be and forever remain obligatory on the State of Wisconsin, viz: Leaving the aforesaid boundary line at the foot of the rapids of the St. Louis river; thence in a direct line, bearing South-westerly, to the mouth of the Iskodewabo, or Rum river, where the same empties into the Mississippi river, thence down the main channel of the said Mississippi river as prescribed in the aforesaid boundary.

Section 2. The propositions contained in the act of Congress are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona-fide purchasers thereof; and no tax shall be imposed on land, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. Provided, that nothing in this Constitution, or in the Act of Congress aforesaid, shall in any manner prejudice, or affect the right of the State of Wisconsin to five hundred thousand acres of land, granted to said State, and to be hereafter selected and located by and under the Act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and grant pre-emption rights," Approved September fourth, one thousand eight hundred and forty-one.

ARTICLE III.

SUFFRAGE.

Section 1. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the State for one year next preceding any election, shall be deemed a qualified elector at such election:

First.—White citizens of the United States.

Second.—White persons of foreign birth who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization.

Third.—Persons of Indian blood who have once been declared by law of Congress to be citizens of the United States, any subsequent laws of Congress to the contrary notwithstanding.

Fourth.—Civilized persons of Indian descent, not members of any tribe:

PROVIDED, that the legislature may at any time extend, by law, the right of suffrage to persons not herein enumerated, but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election, and approved by a majority of all the votes cast at such election.

SECTION 2. No person under guardianship, non-compos mentis, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, or felony, be qualified to vote at any election, unless restored to civil rights.

SECTION 3. All votes shall be given by ballot, except for such township officers as may by law be directed, or allowed to be otherwise chosen.

SECTION 4. No person shall be deemed to have lost his residence in this State, by reason of his absence on business of the United States, or of this State.

SECTION 5. No soldier, seaman, or marine in the Army or Navy of the United States shall be deemed a resident of this State, in consequence of being stationed within the same.

SECTION 6. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or larceny, or of any infamous crime, and depriving every person who shall make, or become directly, or indirectly interested, in any bet or wager depending upon the result of any election, from the right to vote at such election.

ARTICLE IV.

LEGISLATIVE.

SECTION 1. THE legislative power shall be vested in a Senate and Assembly.

SECTION 2. The number of the members of the Assembly shall never be less than fifty-four, nor more than one hundred. The Senate shall consist of a number not more than one-third, nor less than one-fourth of the number of the members of the Assembly.

SECTION 3. The Legislature shall provide by law for an enumeration of the inhabitants of the State in the year one thousand eight hundred and fifty five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the Senate and Assembly, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States Army and Navy.

SECTION 4. The members of the Assembly shall be chosen annually by single districts, on the Tuesday succeeding the first Monday of November, by the qualified electors of the several districts. Such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable.

SECTION 5. The Senators shall be chosen by single districts of convenient contiguous territory, at the same time and in the same manner as members of the Assembly are required to be chosen, and no Assembly district shall be divided in the formation of a Senate district. The Senate districts shall be numbered in regular series, and the Senators chosen by the odd-numbered districts shall go out of office at the expiration of the first year, and the Senators chosen by the even-numbered districts shall go out of office at the expiration of the second year, and thereafter the Senators shall be chosen for the term of two years.

SECTION 6. No person shall be eligible to the Legislature, who shall not have resided one year within the State, and be a qualified elector in the district which he may be chosen to represent.

SECTION 7. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business: but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide.

SECTION 8. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behaviour, and with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

SECTION 9. Each house shall choose its own officers, and the Senate shall choose a temporary president, when the Lieutenant-Governor shall not attend as president, or shall act as Governor.

SECTION 10. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open except when the public welfare shall require secrecy. Neither house shall, without consent of the other, adjourn for more than three days.

SECTION 11. The Legislature shall meet at the seat of government, at such time as shall be provided by law, once in each year, and not oftener, unless convened by the Governor.

SECTION 12. No member of the Legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the State, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

SECTION 13. No person being a member of Congress, or holding any military or civil office under the United States, shall be eligible to a seat in the Legislature, and if any person shall, after his election as a member of the Legislature, be elected to Congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat.

SECTION 14. The Governor shall issue writs of election to fill such vacancies as may occur in either house of the Legislature.

SECTION 15. Members of the Legislature shall in all cases, except treason, felony and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SECTION 16. No member of the Legislature shall be liable in any civil action, or criminal prosecution whatever, for words spoken in debate.

SECTION 17. The style of the laws of the State shall be "The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:" and no law shall be enacted except by bill.

SECTION 18. No private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.

SECTION 19. Any bill may originate in either house of the Legislature, and a bill passed by one house may be amended by the other.

SECTION 20. The yeas and nays of the members of either house, on any question shall, at the request of one-sixth of those present, be entered on the journal.

SECTION 21. Each member of the Legislature shall receive for his services two dollars and fifty cents for each days attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of the meeting of the Legislature, on the most usual route.

SECTION 22. The Legislature may confer upon the boards of supervisors of the several counties of the State, such powers of a local, legislative and administrative character, as they shall from time to time prescribe.

SECTION 23. The Legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable.

SECTION 24. The Legislature shall never authorize any lottery, or grant any divorce.

SECTION 25. The Legislature shall provide by law, that all stationary required for the use of the State, and all printing authorized and required by them to be done for their use, or for the State, shall be let by contract to the lowest bidder, but the Legislature may establish a maximum price; no member of the Legislature, or other State Officer shall be interested, either directly or indirectly, in any such contract.

SECTION 26. The Legislature shall never grant any extra compensation

to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into; nor shall the compensation of any public officer be increased, or diminished during his term of office.

SECTION 27. The Legislature shall direct by law in what manner and in what courts, suits may be brought against the State.

SECTION 28. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the Constitution of the United States, and the Constitution of the State of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.

SECTION 29. The Legislature shall determine what persons shall constitute the militia of the State, and may provide for organizing and disciplining the same in such manner as shall be prescribed by law.

SECTION 30. In all elections to be made by the Legislature, the members thereof shall vote viva-voce, and their votes shall be entered on the journal.

ARTICLE V.

EXECUTIVE.

SECTION 1. The Executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be elected at the same time, and for the same term.

SECTION 2. No person except a citizen of the United States, and a qualified elector of the State, shall be eligible to the office of Governor, or Lieutenant-Governor.

SECTION 3. The Governor and Lieutenant-Governor shall be elected by the qualified electors of the State, at the times and places of choosing members of the Legislature. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or Lieutenant-Governor, the two houses of the Legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the highest number of votes, for Governor, or Lieutenant-Governor. The returns of election for Governor and Lieutenant-Governor, shall be made in such manner as shall be provided by law.

SECTION 4. The Governor shall be Commander-in-chief of the Military and Naval forces of the State. He shall have power to convene the Legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the State. He shall commumnicate to the Legislature, at every session, the condition of the State; and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws be faithfully executed.

SECTION 5. The Governor shall receive during his continuance in office, an annual compensation of one thousand two hundred and fifty dollars.

SECTION 6. The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offences, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Leg-

islature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve, with his reasons for granting the same.

SECTION 7. In case of the impeachment of the Governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the Governor, absent or impeached, shall have returned, or the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of War, at the head of the Military force thereof, he shall continue Commander-in-chief of the Military force of the State.

SECTION 8. The Lieutenant Governor shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy in the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or from mental, or physical disease become incapable of performing the duties of his office, or be absent from the State, the Secretary of State shall act as Governor, until the vacancy shall be filled, or the disability shall cease.

SECTION 9. The Lieutenant-Governor shall receive double the per-diem allowance of members of the Senate, for every day's attendance as President of the Senate, and the same mileage as shall be allowed to members of the Legislature.

SECTION 10. Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration two-thirds of the members present 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 the members present, 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 members voting for or against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

ARTICLE VI.

ADMINISTRATIVE.

SECTION 1. There shall be chosen by the qualified electors of the State, at the times and places of choosing the members of the Legislature, a Secretary of State, Treasurer and Attorney General, who shall severally hold their offices for the term of two years.

SECTION 2. The Secretary of State shall keep a fair record of the official acts of the Legislature and Executive department of the State, and shall, when required, lay the same and all matters relative thereto, before either branch of the Legislature. He shall be ex-officio Auditor and shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services yearly, such sum as shall be provided by law, and shall keep his office at the seat of government.

SECTION 3. The powers, duties and compensation of the Treasurer and Attorney General shall be prescribed by law.

SECTION 4. Sheriffs, Coroners, Registers of Deeds and District Attorneys shall be chosen by the electors of the respective counties, once in every two years, and as often as vacancies shall happen; Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices. They may be required by law, to renew

their security from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the Sheriff. The Governor may remove any officer in this section mentioned, giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.

ARTICLE VII.

JUDICIARY.

SECTION 1. The court for the trial of impeachments shall be composed of the Senate. The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the State; but the party impeached shall be liable to indictment, trial and punishment according to law.

SECTION 2. The judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme court, Circuit courts, Courts of Probate, and in Justices of the Peace. The Legislature may also vest such jurisdiction as shall be deemed necessary in municipal courts, and shall have power to establish inferior courts in the several counties, with limited civil and criminal jurisdiction. Provided, that the jurisdiction which may be vested in municipal courts, shall not exceed, in their respective municipalities, that of circuit courts, in their respective circuits, as prescribed in this Constitution: And that the Legislature shall provide as well for the election of Judges of the Municipal courts, as of the Judges of inferior courts, by the qualified electors of the respective jurisdictions. The term of office of the judges of the said Municipal and inferior courts shall not be longer than that of the Judges of the circuit court.

SECTION 3. The Supreme court, except in cases otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State; but in no case removed to the Supreme Court shall a trial by jury be allowed. The Supreme Court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas-corpus, mandamus, injunction, quo warranto, certiorari; and other original and remedial writs, and to hear and determine the same.

SECTION 4. For the term of five years, and thereafter until the Legislature shall otherwise provide, the judges of the several circuit courts, shall be judges of the Supreme court, four of whom shall constitute a quorum, and the concurrence of a majority of the judges present shall be necessary to a decision. The Legislature shall have power, if they should think it expedient and necessary, to provide by law, for the organization of a separate Supreme court, with the jurisdiction and powers prescribed in this Constitution, to consist of one chief justice, and two associate justices, to be elected by the qualified electors of the State, at such time and in such manner as the Legislature may provide. The separate Supreme court when so organized, shall not be changed or discontinued by the Legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time; and their term of office shall be the same as is provided for the judges of the circuit court. And whenever the Legislature may con-

sider it necessary to establish a separate Supreme court, they shall have power to reduce the number of circuit court judges to four, and subdivide the judicial circuits, but no such subdivision or reduction shall take effect until after the expiration of the term of some one of said judges, or till a vacancy occur by some other means.

SECTION 5. The State shall be divided into five judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Racine, Walworth, Rock and Green; the second circuit, the counties of Milwaukee, Waukesha, Jefferson and Dane; the third circuit, the counties of Washington, Dodge, Columbia, Marquette, Sauk and Portage; the fourth circuit, the counties of Brown, Manitowoc, Sheboygan, Fond du Lac, Winnebago and Calumet; and the fifth circuit shall comprise the counties of Iowa, La Fayette, Grant, Crawford and St. Croix; and the county of Richland shall be attached to Iowa, the county of Chippewa to the county of Crawford, and the county of La Pointe to the county of St. Croix for judicial purposes until otherwise provided by the Legislature.

SECTION 6. The Legislature may alter the limits, or increase the number of circuits, making them as compact and convenient as practicable, and bounding them by county lines; but no such alteration or increase shall have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this Constitution and receive a salary not less than that herein provided for the judges of the circuit court.

SECTION 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this Constitution, and until his successor shall be chosen and qualified; and after he shall have been elected, he shall reside in the circuit for which he was elected. One of said judges shall be designated as chief justice in such manner as the Legislature shall provide. And the Legislature shall at its first session provide by law as well for the election of, as for classifying the judges of the circuit court to be elected under this Constitution, in such manner that one of said judges shall go out of office in two years, one in three years, one in four years, one in five years and one in six years, and thereafter the judge elected to fill the office shall hold the same for six years.

SECTION 8. The circuit courts shall have original jurisdiction in all matters civil and criminal within this State, not excepted in this Constitution, and not hereafter prohibited by law; and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and jurisdictions.

SECTION 9. When a vacancy shall happen in the office of judge of the Supreme or circuit courts, such vacancy shall be filled by an appointment of the Governor, which shall continue until a successor is elected and qualified; and when elected such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for State or county officers, nor within thirty days either before, or after such election.

SECTION 10. Each of the judges of the Supreme and circuit courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office, or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them for any office, except a judicial office, given by the Legislature or the people, shall be void. No person shall be eligible to the office of judge, who shall not, at the time of his election, be a citizen of the United States, and have attained the age of twenty-five years, and be a qualified elector within the jurisdiction for which he may be chosen.

SECTION 11. The Supreme court shall hold at least one term, annually, at the seat of government of the State, at such time as shall be provided by law. And the Legislature may provide for holding other terms, and at other places when they may deem it necessary. A Cir-

cuit Court shall be held, at least twice in each year, in each county of this State organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

SECTION 12. There shall be a clerk of the circuit court chosen in each county organized for judicial purposes, by the qualified electors thereof, who shall hold his office for two years, subject to removal, as shall be provided by law. In case of a vacancy, the judge of the circuit court shall have the power to appoint a clerk until the vacancy shall be filled by an election. The clerk thus elected or appointed shall give such security as the Legislature may require; and when elected shall hold his office for a full term. The Supreme court shall appoint its own clerk, and the clerk of a circuit court may be appointed clerk of the Supreme court.

SECTION 13. Any judge of the Supreme or circuit court may be removed from office, by address of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein, but no removal shall be made by virtue of this section, unless the judge complained of shall have been served with a copy of the charges against him, as the ground of address, and shall have had an opportunity of being heard in his defence. On the question of removal, the ayes and noes shall be entered on the journals.

SECTION 14. There shall be chosen in each county, by the qualified electors thereof, a Judge of Probate, who shall hold his office for two years, and until his successor shall be elected and qualified, and whose jurisdiction, powers and duties shall be prescribed by law. Provided, however, that the Legislature shall have power to abolish the office of Judge of Probate in any county, and to confer Probate powers upon such inferior courts as may be established in said county.

SECTION 15. The electors of the several towns, at their annual town meeting, and the electors of cities and villages, at their charter elections, shall in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be for two years, and until their successors in office shall be elected and qualified. In case of an election to fill a vacancy, occurring before the expiration of a full term, the justice elected shall hold for the residue of the unexpired term. Their number and classification shall be regulated by law. And the tenure of two years shall in no wise interfere with the classification in the first instance. The justices, thus elected, shall have such civil and criminal jurisdiction as shall be prescribed by law.

SECTION 16. The Legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township, and shall have power to render judgment to be obligatory on the parties, when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment, or assent thereto in writing.

SECTION 17. The style of all writs and process shall be, "The State of Wisconsin"; all criminal prosecutions shall be carried on in the name and by the authority of the same; and all indictments shall conclude against the peace and dignity of the State.

SECTION 18. The Legislature shall impose a tax on all civil suits commenced, or prosecuted in the municipal, inferior, or circuit courts, which shall constitute a fund to be applied toward the payment of the salary of judges.

SECTION 19. The testimony in causes in equity shall be taken in like manner as in cases at law, and the office of master in chancery is hereby prohibited.

SECTION 20. Any suitor, in any court of this State, shall have the right to prosecute or defend his suit either in his own proper person, or by an Attorney or agent of his choice.

SECTION 21. The Legislature shall provide by law for the speedy publication of all statute laws, and of such judicial decisions, made within the State, as may be deemed expedient. And no general law shall be in force until published.

SECTION 22. The Legislature at its first session, after the adoption of this Constitution, shall provide for the appointment of three commis-

sioners, whose duty it shall be to inquire into, revise, and simplify the rules of practice, pleadings, forms and proceedings, and arrange a system, adapted to the courts of record of this State, and report the same to the Legislature, subject to their modification and adoption; and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.

SECTION 23. The Legislature may provide for the appointment of one or more persons in each organized county, and may vest in such persons such judicial powers as shall be prescribed by law. Provided, that said power shall not exceed that of a judge of a circuit court at chambers.

ARTICLE VIII.

FINANCE.

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe.

SECTION 2. No money shall be paid out of the treasury, except in pursuance of an appropriation by law.

SECTION 3. The credit of the State shall never be given, or loaned, in aid of any individual, association, or corporation.

SECTION 4. The State shall never contract any public debt, except in the cases and manner herein provided.

SECTION 5. The Legislature shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year; and whenever the expenses of any year shall exceed the income, the Legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.

SECTION 6. For the purpose of defraying extraordinary expenditures, the State may contract public debts. (but such debts shall never in the aggregate exceed one hundred thousand dollars.) Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed, or diminished, until the principal and interest of such debt shall have been wholly paid.

SECTION 7. The Legislature may also borrow money to repel invasion, suppress insurrection, or defend the State in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the re-payment of the debt thereby created.

SECTION 8. On the passage in either house of the Legislature, of any law which imposes, continues or renews a tax, or creates a debt, or charge, or makes, continues, or renews an appropriation of public, or trust money, or releases, discharges, or commutes a claim, or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house shall, in all such cases be required to constitute a quorum therein.

SECTION 9. No scrip, certificate, or other evidence of State debt, whatsoever, shall be issued, except for such debts as are authorized by the sixth and seventh sections of this Article.

SECTION 10. The State shall never contract any debt for works of Internal Improvement, or be a party in carrying on such works, but whenever grants of land or other property shall have been made to the State, especially dedicated by the grant to particular works of Internal Improvement, the State may carry on such particular works, and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

ARTICLE IX.

EMINENT DOMAIN AND PROPERTY OF THE STATE.

SECTION 1. The State shall have concurrent jurisdiction on all rivers and lakes bordering on this State, so far as such rivers, or lakes shall form a common boundary to the State, and any other State, or Territory, now or hereafter to be formed, and bounded by the same: And the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same shall be common highways and forever free, as well to the inhabitants of the State, as to the citizens of the United States, without any tax, impost or duty therefor.

SECTION 2. The title to all lands and other property which have accrued to the Territory of Wisconsin by grant, gift, purchase, forfeiture, escheat, or otherwise, shall vest in the State of Wisconsin.

SECTION 3. The people of the State, in their right of sovereignty, are declared to possess the ultimate property, in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

ARTICLE X.

EDUCATION.

SECTION 1. The supervision of public instruction shall be vested in a State Superintendent, and such other officers as the Legislature shall direct. The State Superintendent shall be chosen by the qualified electors of the State, in such manner as the Legislature shall provide; his powers, duties and compensation shall be prescribed by law. Provided, that his compensation shall not exceed the sum of twelve hundred dollars annually.

SECTION 2. The proceeds of all lands, that have been or hereafter may be granted by the United States to this State for educational purposes (except the lands heretofore granted for the purposes of a University) and all moneys, and the clear proceeds of all property that may accrue to the State by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the State where the purposes of such grant are not specified, and the five hundred thousand acres of land, to which the State is entitled by the provisions of an act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, one thousand eight hundred and forty-one; and also the five per-centum of the nett proceeds of the public lands to which the State shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two grants last mentioned) shall be set apart as a separate fund, to be called "The School Fund," the interest of which and all other revenues derived from the school lands, shall be exclusively applied to the following objects, to wit:

First. To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor.

Second. The residue shall be appropriated to the support and maintenance of Academies and Normal Schools, and suitable libraries and apparatus therefor.

SECTION 3. The Legislature shall provide by law for the establishment of District Schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition, to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein.

SECTION 4. Each town and city shall be required to raise, by tax, annually, for the support of common schools therein, a sum not less

than one half the amount received by such town or city respectively for school purposes from the income of the school fund.

SECTION 5. Provision shall be made by law, for the distribution of the income of the school fund among the several towns and cities of the State, for the support of common schools therein, in some just proportion to the number of children and youth resident therein, between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city, or town, for the year in which said city or town shall fail to raise such tax; nor to any school district for the year in which a school shall not be maintained at least three months.

SECTION 6. Provision shall be made by law for the establishment of a State University, at or near the seat of State government, and for connecting with the same, from time to time, such colleges in different parts of the State, as the interests of education may require. The proceeds of all lands that have been, or may hereafter be granted by the United States to the State for the support of a University, shall be and remain a perpetual fund, to be called "The University Fund," the interest of which shall be appropriated to the support of the State University, and no sectarian instruction shall be allowed in such University.

SECTION 7. The Secretary of State, Treasurer and Attorney General, shall constitute a board of commissioners for the sale of the School and University lands, and for the investment of the funds arising therefrom. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office.

SECTION 8. Provision shall be made by law for the sale of all School and University lands, after they shall have been appraised; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of the sale, the commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the Treasurer. The commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands, and to discharge any mortgages taken as security, when the sum due thereon shall have been paid. The commissioners shall have power to withold from sale any portion of such lands, when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands, as well as all other University and School funds, in such manner as the Legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.

ARTICLE XI.

CORPORATIONS.

SECTION 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts, enacted under the provisions of this section, may be altered or repealed by the Legislature at any time after their passage.

SECTION 2. No municipal corporation shall take private property for public use, against the consent of the owner, without the necessity thereof being first established by the verdict of a jury.

SECTION 3. It shall be the duty of the Legislature, and they are hereby empowered, to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations.

SECTION 4. The Legislature shall not have power to create, authorize or incorporate, by any general, or special law, any bank, or banking power or privilege, or any institution or corporation having any banking power or privilege whatever, except as provided in this article.

SECTION 5. The Legislature may submit to the voters, at any general election, the question of "BANK," or "NO BANK," and if at any such elec-

tion a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of Banks, then the Legislature shall have power to grant Bank charters, or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders. Provided, that no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State, at some general election, and been approved by a majority of the votes cast on that subject at such election.

ARTICLE XII.

AMENDMENTS.

SECTION 1. Any amendment, or amendments to this Constitution may be proposed in either house of the Legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment, or amendments, shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election; and shall be published for three months previous to the time of holding such election, and if, in the Legislature so next chosen, such proposed amendment, or amendments, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment, or amendments, to the people in such manner, and at such time, as the Legislature shall prescribe; and if the people shall approve and ratify such amendment, or amendments by a majority of the electors voting thereon, such amendment, or amendments, shall become part of the Constitution; PROVIDED, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

SECTION 2. If at any time a majority of the Senate and Assembly shall deem it necessary to call a convention to revise or change this Constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the Legislature. And if it shall appear that a majority of the electors voting thereon, have voted for a convention, the Legislature shall, at its next session, provide for calling such convention.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS.

SECTION 1. The political year for the State of Wisconsin shall commence on the first Monday in January in each year, and the general election shall be holden on the Tuesday succeeding the first Monday in November in each year.

SECTION 2. Any inhabitant of this State who may hereafter be engaged, either directly or indirectly in a duel, either as principal or accessory, shall forever be disqualified as an elector, and from holding any office under the Constitution and laws of this State, and may be punished in such other manner as shall be prescribed by law.

SECTION 3. No member of Congress, nor any person holding any office of profit or trust under the United States (Postmasters excepted) or under any foreign power; no person convicted of any infamous crime in any court within the United States; and no person being a defaulter to the United States, or to this State, or to any county, or town therein, or to any State, or Territory within the United States, shall be eligible to any office of trust, profit, or honor in this State.

SECTION 4. It shall be the duty of the Legislature to provide a great seal for the State, which shall be kept by the Secretary of State, and all official acts of the Governor, his approbation of the laws excepted, shall be thereby authenticated.

SECTION 5. All persons residing upon Indian lands, within any county of the State, and qualified to exercise the right of suffrage under this Constitution, shall be entitled to vote at the polls which may be held nearest their residence, for State, United States or County officers. Provided, that no person shall vote for county officers out of the county in which he resides.

SECTION 6. The elective officers of the Legislature, other than the presiding officers shall be a chief clerk and a sergeant-at-arms, to be elected by each house.

SECTION 7. No county with an area of nine hundred square miles, or less, shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county, voting on the question, shall vote for the same.

SECTION 8. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the voters of the county, voting on the question, shall have voted in favor of its removal to such point.

SECTION 9. All county officers whose election, or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment, is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SECTION 10. The Legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this Constitution.

ARTICLE XIV.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a Territorial to a permanent State government, it is declared, that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals, as of bodies corporate, shall continue as if no such change had taken place; and all process which may be issued under the authority of the Territory of Wisconsin previous to its admission into the Union of the United States, shall be as valid as if issued in the name of the State.

SECTION 2. All laws now in force, in the Territory of Wisconsin, which are not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or be altered or repealed by the Legislature.

SECTION 3. All fines, penalties, or forfeitures, accruing to the Territory of Wisconsin, shall inure to the use of the State.

SECTION 4. All recognizances heretofore taken, or which may be taken before the change from Territorial to a permanent State government, shall remain valid, and shall pass to, and may be prosecuted in the name of the State; and all bonds executed to the Governor of the Territory, or to any other officer, or court, in his, or their official capacity, shall pass to the Governor or State authority, and their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; and all the estate, or property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, and claims or debts of whatsoever description, of the Territory of Wisconsin, shall inure to and vest in the State of Wisconsin, and may be sued for and recovered, in the same manner and to the same extent, by the State of Wisconsin, as the same could have been by the Territory of Wisconsin.

All criminal prosecutions and penal actions which may have arisen, or which may arise, before the change from a Territorial to a State government, and which shall then be pending, shall be prosecuted to judgement and execution in the name of the State. All offences committed against the laws of the Territory of Wisconsin, before the change from a Territorial to a State government, and which shall not be prosecuted before such change, may be prosecuted in the name and by the authority of the State of Wisconsin, with like effect as though such change had not taken place; and all penalties incurred, shall remain the same as if this Constitution had not been adopted. All actions at law and suits in equity, which may be pending in any of the courts of the Territory of Wisconsin, at the time of the change from a Territorial to a State government, may be continued and transferred to any court of the State, which shall have jurisdiction of the subject matter thereof.

SECTION 5. All officers, civil and military, now holding their offices under the authority of the United States, or of the Territory of Wisconsin, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SECTION 6. The first session of the Legislature of the State of Wisconsin shall commence on the first Monday in June next, and shall be held at the village of Madison, which shall be and remain the seat of Government, until otherwise provided by law.

SECTION 7. All county, precinct and township officers shall continue to hold their respective offices, unless removed by the competent authority, until the Legislature shall, in conformity with the provisions of this Constitution, provide for the holding of elections to fill such offices respectively.

SECTION 8. The President of this convention shall, immediately after its adjournment, caus a fair copy of this Constitution, together with a copy of the act of the Legislature of this Territory, entitled "An act in relation to the formation of a State government in Wisconsin, and to change the time of holding the annual session of the Legislature," Approved October 27th 1847, providing for the calling of this Convention, and also a copy of so much of the last census of this Territory, as exhibits the number of its inhabitants, to be forwarded to the President of the United States, to be laid before the Congress of the United States, at its present session.

SECTION 9. This Constitution shall be submitted at an election to be held on the second Monday in March next, for ratification or rejection, to all white male persons of the age of twenty-one years or upwards, who shall then be residents of this Territory, and citizens of the United States, or shall have declared their intention to become such in conformity with the laws of Congress on the subject of naturalization, and all persons having such qualifications shall be entitled to vote for, or against the adoption of this Constitution, and for all officers first elected under it. And if the Constitution be ratified by the said electors, it shall become the Constitution of the State of Wisconsin. On such of the ballots as are for the Constitution, shall be written or printed the word "YES", and on such as are against the Constitution, the word, "NO". The election shall be conducted in the manner now prescribed by law, and the returns made by the clerks of the boards of supervisors or county commissioners (as the case may be) to the Governor of the Territory, at any time before the tenth day of April next. And in the event of the ratification of this Constitution, by a majority of all the votes given, it shall be the duty of the Governor of this Territory to make proclamation of the same, and to transmit a digest of the returns to the Senate and Assembly of the State, on the first day of their session. An election shall be held, for Governor, Lieutenant-Governor, Treasurer, Attorney General, members of the State Legislature, and members of Congress, on the second Monday of May next; and no other or further notice of such election shall be required.

SECTION 10. Two members of Congress shall also be elected, on the second Monday of May next; and until otherwise provided by law, the counties of Milwaukee, Waukesha, Jefferson, Racine, Walworth, Rock and Green, shall constitute the first congressional district and elect one member. And the counties of Washington, Sheboygan, Manitowoc,

Calumet, Brown, Winnebago, Fond du Lac, Marquette, Sauk, Portage, Columbia, Dodge, Dane, Iowa, La Fayette, Grant, Richland, Crawford, Chippewa, St. Croix and La Pointe, shall constitute the second congressional district, and shall elect one member.

SECTION 11. The several elections, provided for in this article shall be conducted according to the existing laws of the Territory, provided that no elector shall be entitled to vote except in the town, ward or precinct where he resides. The returns of election for Senators and Members of Assembly, shall be transmitted to the clerk of the Board of Supervisors, or County Commissioners, as the case may be; and the votes shall be canvassed, and certificates of election issued as now provided by law. In the first senatorial district, the returns of the election for Senator shall be made to the proper officer in the county of Brown; in the second senatorial district, to the proper officer in the county of Columbia; in the third senatorial district, to the proper officer in the county of Crawford; in the fourth senatorial district, to the proper officer in the county of Fond du Lac; and in the fifth senatorial district, to the proper officer in the county of Iowa. The returns of election for State officers and members of Congress, shall be certified and transmitted to the Speaker of the Assembly, at the seat of government, in the same manner as the vote for delegate to Congress are required to be certified and returned by the laws of the Territory of Wisconsin, to the Secretary of said Territory, and in such time, that they may be received on the first Monday in June next; and as soon as the Legislature shall be organized, the Speaker of the Assembly, and the President of the Senate shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill the several offices hereinbefore mentioned; and give to each of the persons elected, a certificate of his election.

SECTION 12. Until there shall be a new apportionment, the Senators and Members of the Assembly, shall be apportioned among the several districts, as hereinafter mentioned; and each district shall be entitled to elect one Senator, or member of the Assmbly, as the case may be.*

SECTION 13. Such parts of the common law as are now in force in the Territory of Wisconsin, not inconsistent with this Constitution, shall be and continue part of the law of this State, until altered, or suspended by the Legislature.

SECTION 14. The Senators first elected in the even-numbered Senate districts, the Governor, Lieutenant-Governor, and other State officers first elected under this Constitution, shall enter upon the duties of their respective offices on the first Monday of June next, and shall continue in office for one year from the first Monday of January next; the Senators first elected in the odd-numbered Senate districts, and the members of the Assembly, first elected, shall enter upon their duties respectively on the first Monday of June next, and shall continue in office until the first Monday in January next.

SECTION 15. The oath of office may be administered by any Judge or Justice of the Peace, until the Legislature shall otherwise direct.

RESOLUTIONS.

Resolved.—That the Congress of the United be and is hereby requested, upon the application of Wisconsin for admission into the Union, so to alter the provisions of an act of Congress entitled "an act to grant a quantity of land to the Territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," approved June eighteenth, eighteen hundred and thirty eight, and so to alter the terms and conditions of the grant made therein, that the odd-numbered sections thereby granted and remaining unsold may be held and disposed of by the

*The detailed apportionment is omitted. See Blue Book for it.

State of Wisconsin as part of the five hundred thousand acres of land to which said State is entitled by the provisions of an act of Congress entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, eighteen hundred and forty one; and further, that the even-numbered sections reserved by Congress, may be offered for sale by the United States for the same minimum price, and subject to the same rights of pre-emption as other public lands of the United States.

Resolved.—That Congress be further requested to pass an act whereby the excess price over and above one dollar and twenty five cents per acre, which may have been paid by the purchasers of said even-numbered sections which shall have been sold by the United States, be refunded to the present owners thereof, or they be allowed to enter any of the public lands of the United States to an amount equal in value to the excess so paid.

Resolved.—That in case the said odd-numbered sections shall be ceded to the State as aforesaid, the same shall be sold by the State in the same manner as other school lands, provided that the same rights of pre-emption as are now granted by the laws of the United States, shall be secured to persons who may be actually settled upon such lands at the time of the adoption of this Constitution; and provided further, that the excess price, over and above one dollar and twenty-five cents per acre, absolutely or conditionally contracted to be paid by the purchasers of any part of said sections which shall have been sold by the Territory of Wisconsin, shall be remitted to such purchasers, their representatives or assigns.

Resolved.—That Congress be requested, upon the application of Wisconsin for admission into the Union, to pass an act whereby the grant of five hundred thousand acres of land, to which the State of Wisconsin is entitled by the provisions of an Act of Congress entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved the fourth day of September, eighteen hundred and forty-one, and also the five per-centum of the nett proceeds . . . . . of the public lands lying within the State, to which it shall become entitled on its admission into the Union, by the provisions of an Act of Congress entitled "an act to enable the people of Wisconsin Territory to form a Constitution and State government, and for the admission of such State into the Union," approved the sixth day of August, eighteen hundred and forty six, shall be granted to the State of Wisconsin for the use of schools, instead of the purposes mentioned in the said acts of Congress respectively.

Resolved.—That the Congress of the United States be and hereby is requested, upon the admission of this State into the Union, so to alter the provisions of the Act of Congress entitled "an act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin," that the price of the lands reserved to the United States, shall be reduced to the minimum price of the public lands.

Resolved.—That the Legislature of this State shall make provision by law for the sale of the lands granted to the State in aid of said improvements, subject to the same rights of pre-emption to the settlers thereon, as are now allowed by law to settlers on the public lands.

Resolved.—That the foregoing resolutions be appended to, and signed with the Constitution of Wisconsin, and submitted therewith to the people of this Territory, and to the Congress of the United States.

AMENDMENTS.

ARTICLE I.

[Section 8, as amended by a vote of the people at the General Election, November 8, 1870.]

SECTION 8. No person shall be held to answer for a criminal offense without due process of law, and no person, for the same offense, shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great; and 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.

ARTICLE III.

[Section 1, as amended by a vote of the people at the General Election, November 7, 1882.]

SECTION 1. Every male person of the age of twenty-one years or upwards belonging to either of the following classes who shall have resided within the State for one year next preceding any election, and in the election district where he offers to vote, such time as may be prescribed by the Legislature, not exceeding thirty days, shall be deemed a qualified elector at such election.

1. Citizens of the United States.
2. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.
3. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.
4. Civilized persons of Indian descent not members of any tribe; provided, that the legislature may at any time extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election and approved by a majority of all the votes cast at such election; and provided further, that in incorporated cities and villages, the legislature may provide for the registration of electors and prescribe proper rules and regulations therefor.

ARTICLE IV.

[Sections 4, 5, 11 and 21, as amended by a vote of the people at the General Election, November 8, 1881.]

SECTION 4. The members of the assembly shall be chosen biennially, by single districts, on the Tuesday succeeding the first Monday of November after the adoption of this amendment, by the qualified electors of the several districts; such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory, and be in as compact form as practicable.

SECTION 5. The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen, and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even-numbered districts. The senators elected, or holding over at the time of the adoption of this amendment, shall continue in office till their successors are

duly elected and qualified; and after the adoption of this amendment, all senators shall be chosen for the term of four years.

SECTION 11. The legislature shall meet at the seat of government at such time as shall be provided by law, once in two years and no oftener, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened.

SECTION 21. Each member of the legislature shall receive for his services, for and during a regular session, the sum of five hundred dollars, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature on the most usual route. In case of an extra session of the legislature, no additional compensation shall be allowed to any member thereof, either directly or indirectly, except for mileage, to be computed at the same rate as for a regular session. No stationery, newspapers, postage or other perquisite, except the salary and mileage above provided, shall be received from the state by any member of the legislature for his services, or in any other manner as such member.

[Sections 31 and 32, as amended by a vote of the people at the General Election, November 7, 1871, and amendment to section 31, adopted November 8, 1892.]

SECTION 31. The Legislature is prohibited from enacting any special or private laws in the following cases: 1st. For changing the name of persons or constituting one person the heir-at-law of another. 2d. For laying out, opening or altering highways, except in cases of State roads extending into more than one county, and military roads, to aid in the construction of which lands may be granted by Congress. 3d. For authorizing persons to keep ferries across streams, at points wholly within this state. 4th. For authorizing the sale or mortgage of real or personal property of minors or others under disability. 5th. For locating or changing any county seat. 6th. For assessment or collection of taxes or for extending the time for collection thereof. 7th. For granting corporate powers or privileges, except to cities. 8th. For authorizing the apportionment of any part of the school fund. 9th. For incorporating any city, town or villlage, or to amend the charter thereof.

ARTICLE V.

[Sections 5 and 9, as amended by a vote of the people at the General Election, November 2, 1869.]

SECTION 5. The Governor shall receive, during his continuance in office, an annual compensation of five thousand dollars which shall be in full for all traveling or other expenses incident to his duties.

SECTION 9. The Lieutenant Governor shall receive, during his continuance in office, an annual compensation of one thousand dollars.

ARTICLE VI.

[Section 4, as amended by a vote of the people at the General Election, November 7, 1882.]

SECTION 4. Sheriffs, coroners, registers of deeds, district attorneys, and all other county officers except judicial officers, shall be chosen by the electors of the respective counties, once in every two years. Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices; they may be required by law to renew their security from time to time, and in default of giving such new security their office shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, giving to such a copy of the charges against him and an opportunity of being heard in his defense. All vacancies shall be filled by appointment; and

the person appointed to fill a vacancy shall hold only for the unexpired portion of the term to which he shall be appointed and until his successor shall be elected and qualified.

ARTICLE VII.

[Section 4, as amended by a vote of the people at the General Election, November 6, 1877.]

SECTION 4. The supreme court shall consist of one chief justice and four associate justices to be elected by the qualified electors of the State. The Legislature shall, at its first session after the adoption of this amendment, provide by law for the election of two associate justices of said court, to hold their offices for terms ending two and four years respectively, after the end of the term of the justice of the said court then last to expire. And thereafter the chief justice and associate justices of the said court shall be elected and hold their offices respectively for the term of ten years.

[Section 12, as amended by a vote of the people at the General Election, November 7, 1882.]

SECTION 12. There shall be a clerk of the circuit court chosen in each county organized for judicial purposes by the qualified electors thereof, who shall hold his office for two years, subject to removal as shall be provided by law; in case of a vacancy the judge of the circuit court shall have power to appoint a clerk until the vacancy shall be filled by an election; the clerk thus elected or appointed shall give such security as the Legislature may require. The supreme court shall appoint its own clerk; and a clerk of the circuit court may be appointed a clerk of the supreme court.

ARTICLE VIII.

[Section 2, as amended by a vote of the people at the General Election, November 6, 1877.]

SECTION 2. No money shall be paid out of the treasury, except in pursuance of an appropriation by law. No appropriation shall be made for the payment of any claim against the State, except claims of the United States, and judgments, unless filed within six years after the claim accrued.

ARTICLE XI.

[Section 3, as amended by a vote of the people at the General Election, November 3, 1874.]

SECTION 3. It shall be the duty of the Legislature, and they are hereby empowered, to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting by such municipal corporations. No county, city, town, village, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to any amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, town, village, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on said debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

ARTICLE XIII.

[Section 1, as amended by a vote of the people at the General Election, November 7, 1882.]

SECTION 1. The political year for the State of Wisconsin shall commence on the first Monday in January in each year, and the general elections shall be holden on the Tuesday next succeeding the first Monday in November. The first general election for all state and county officers, except judicial officers, after the adoption of this amendment, shall be holden in the year A. D. 1884, and thereafter the general election shall be held biennially. All state, county or other officers elected at the general election in the year 1881, and whose term of office would otherwise expire on the first Monday of January in the year 1884, shall hold and continue in such office respectively, until the first Monday in January in the year 1885.

ARTICLE VII.

[Section 4, as amended by a vote of the people at an election April 2, 1889.]

SECTION 4. The chief justice and associate justices of the supreme court shall be severally known as justices of said court with the same terms of office, respectively, as now provided. The supreme court shall consist of five justices (any three of whom shall be a quorum), to be elected as now provided. The justice having been longest a continuous member of the court (or in case of two or more of such senior justices having served for the same length of time, then the one whose commission first expires), shall be ex-officio the chief justice.

[Section 7, as amended by a vote of the people at an election, April 6, 1897.]

SECTION 7. For each circuit there shall be chosen by the qualified electors thereof, one circuit judge, except that in any circuit composed of one county only, which county shall contain a population according to the last state or United States census, of one hundred thousand inhabitants or over, the Legislature may, from time to time, authorize additional circuit judges to be chosen. Every circuit judge shall reside in the circuit from which he is elected, and shall hold his office for such term and receive such compensation as the Legislature shall prescribe.

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