CONSTITUTION OF THE UNITED STATES
ITS HISTORY APPLICATION AND CONSTRUCTION

BY: DAVID K. WATSON

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THE

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UNITED STATES

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CHAPTER V.

LEGISLATIVE POWERS.

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.

The first Article of the Constitution establishes the legislative branch of the government, divides it into a Senate and House of Representatives, prescribes the qualifications of their members, the manner of their election, the duration of their terms, the powers of each House, enumerates and defines the express powers conferred upon Congress and those which are denied to it and those which are denied to the individual States.

This section establishes the bicameral system of legislation — the division of the legislative branch of the Government into a Senate and House of Representatives. Most of the States had a similar provision in their Constitutions which had no doubt been suggested by the division of Parliament into the Lords and Commons.[1]

The Constitution does not expressly divide the Government into Legislative, Executive and Judicial branches. Such a division was suggested in Mr. Pinckney's plan for a Constitution,[2] and later by amendment in the plan of Mr. Randolph.[3] This was adopted by the Committee of the Whole,[4] and was the second of the Articles referred to the Committee of Detail[5] and was recommended by that Committee,[6] and finally by the Convention without debate or opposition,[7] but it was not recommended by the Committee on Style,[8] and no such division of the powers of the Government is provided for in the Constitution,[9] but "these powers are each declared in a separate and independent manner" by that instrument.[10]

On this subject Mr. Madison said; "The Constitution organizes a government into the usual legislative, executive, and judiciary departments; invests it with specified powers, leaving others to the parties to the Constitution; it makes the Government, like other governments, to operate directly on the people; places at its command the needful physical means of executing its powers; and, finally, proclaims its supremacy, and that of the laws made in pursuance of it, over the Constitutions and laws of the States; the powers of the Government being exercised, as in other elective and responsible governments, under the control of its constituents, the people and legislatures of the States, and subject to the revolutionary *rights* of the people in extreme cases."[11]

History of the Legislative Provision. — Each plan for a Constitution which was submitted to the Convention contained a provision relative to the legislative power of Congress. That of Mr. Randolph provided: "Each branch ought to possess the right of originating acts; that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover, to legislate in all cases in which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."[12]

The plan of Mr. Pinckney was: "The legislative power shall be vested in a Congress to consist of two separate Houses; one to be called the House of Delegates, and the other the Senate."[13]

Mr. Paterson's plan proposed to enlarge the authority of Congress under the Articles of Confederation so that "In addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for

raising a revenue, by levying a duty or duties on all goods or merchandise of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum or parchment; and by a postage on all letters or packages passing through the general post office; to be applied to such Federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other."[14]

Mr. Hamilton's plan: "The supreme Legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate; who together shall form the Legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned."[15]

At first it was agreed by all the States, except Pennsylvania, that there should be two branches of Congress, though afterwards there was some slight objection to this manifested in the debates, but the Committee of the "Whole reported in favor of it. The Committee of Detail changed the language and reported "The Legislative powers, shall be vested in a Congress to consist of two separate and distinct bodies of men, The House of Representatives and the Senate, each of which shall in all cases have a negative on the other." The Convention, on motion of Madison, struck out the words "Each of which shall have a negative on the other." The Committee on Style reported the clause as it is found in the Constitution. The proceedings of the Convention furnish no special reason why Congress was divided into two branches except that one would be a check upon the other. Judge Walker in his "American Law" (p. 79) has said, "That the motive for dividing legislative power into a Senate and a House of Representatives is to obtain the utmost security for its being faithfully and beneficially exercised."

Mr. Randolph's resolution was considered in the Committee of the Whole at a very early day by the Convention, and was the only plan on this subject which was considered. The Committee first considered the question whether each branch of the National Legislature should originate laws, and then whether all the legislative powers vested in the existing Congress by the Articles of Confederation should be transferred to the National Legislature. Each of these questions was decided in the affirmative without debate and by unanimous vote.[16]

All Legislative Powers herein granted. — Under the Articles of Confederation, the entire control of the Government was vested in Congress; but by this section the Constitution limits the powers of Congress to matters of legislation, and confers other powers upon other branches of the Government.

Legislative power, is the power to make, amend, alter or repeal laws. This clause does not confer unlimited power of legislation upon Congress, but limits it to such legislative powers as are granted by the Constitution.

Various definitions of legislative power have been given. Locke defined it as "That power which has a right to direct how the force of the Commonwealth shall be employed for preserving the community and the members of it."[17]

It was held in McPherson v. Blacker,[18] "The legislative power is the supreme authority except as limited by the Constitution of the State, and the sovereignty of the people is exercised through their representatives in the legislature unless by the fundamental law power is elsewhere reposed."

"Irrespective of the operation of the Federal Constitution and restrictions asserted to be inherent in the nature of American institutions, the general rule is, that there are no limitations upon the legislative power of the legislature of a State, except those imposed by its written Constitution."[19]

The provision in the Constitution that, "All legislative powers herein granted shall be vested in a Congress of the United States," means that Congress[20] — keeping within the limits of its powers and observing the restrictions imposed by the Constitution — may, in its discretion, enact any statute appropriate to accomplish the objects for which the National Government was established.[21]

Certain of the Supreme Court justices while on the Circuit, together with certain district judges, having refused to perform the duties which the law required of them, Attorney-General Randolph brought an action in mandamus in the Supreme Court to compel them to perform the duties required by the act of Congress, but before the Court decided the case, Congress modified the act so as to relieve the judges from the performance of any duties under it. This was the first suit in mandamus brought in the Supreme Court of the United States, and was one of the first cases ever brought in that court.[22]

"Proper respect for a co-ordinate branch of the Government requires the courts of the United States to give effect to the presumption that Congress will pass no act not within its constitutional power. This presumption should prevail unless the lack of constitutional authority to pass an act in question is clearly demonstrated. While conceding this, it must, nevertheless, be stated that the government of the United States is one of delegated, limited and enumerated powers. Therefore every valid act of Congress must find in the Constitution some warrant for its passage."[23]

But there is nothing in the Constitution which excludes the exercise of incidental or implied power. Said Chief Justice Marshall, "If the end be legitimate and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may be constitutionally employed to carry it into effect."[24]

In ex parte Yarbrough[25] it was held: "In construing the Constitution of the United States, the doctrine that what is implied is as much a part of the instrument as what is expressed is a necessity by reason of the inherent inability to put all derivative powers into words."

Legislative Power can not be delegated. — It is an established doctrine of constitutional law that Congress can not delegate its power to legislate to another branch of the government or to any officer, commission, board, or authority whatever. The power of legislation can not be assigned or transferred by the body chosen to enact it, to any other body, or to another branch of the government, not even to the President.

Powers which are strictly and wholly legislative can not be delegated by Congress.

"That Congress can not delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution," said Mr. Justice Harlan[26] in Field v. Clark.

"The true distinction," said the Justice, citing the opinion of Judge Ranney, 1st Ohio State, 88, "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first can not be done; to the latter no valid objection can be made."

But the principle that legislative authority can not be delegated is only applicable to powers strictly legislative and there are many matters which may properly be regulated and governed without the exercise of legislative power. Thus the authority conferred upon the President by act of Congress to reduce the revenue and equalize duties on imports and for other purposes, to suspend by proclamation the free introduction of sugar, molasses, coffee, tea and hides, when he is satisfied that any country producing said goods imposed duties or other exactions upon agricultural, or other products of the United States, which he may deem reciprocal, unequal or unreasonable, does not transfer legislative power to the President, and is constitutional.[27]

Rules and regulations prescribed by the President or by Cabinet officers under Congressional authority, may amount to regulations prescribed by law, and acts done in pursuance of such regulations and rules may have the force of law.[28]

So a provision in an act which authorized a Railway Association and the Interstate Commerce Commission to determine the height and variation of draw bars for freight cars and provided that they should announce their decision thereon was held a valid delegation of legislative power.[29]

So in In re Kollock,[30] Fuller, C. J., held, "an act imposing a tax upon, and regulating the manufacture, sale, etc., of oleomargarine, requiring the packages thereof to be. marked and branded, and prohibiting the sale of packages that are not so marked and branded, is not, because it left the matter of designating the marks, brands and stamps to the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, an unconstitutional delegation of power."

On the proposition to confer upon the National Legislature, legislative power in all cases in which the individual States were incompetent, Mr. Pinckney and Mr. Rutledge

objected because of the vagueness of the term "incompetent," and said they could not determine how to vote until they should see an enumeration of the powers, comprehended by this definition.[31] This caused a debate upon the subject whether the Committee was infringing too much upon the powers of the States. Upon the vote being taken upon the question it was passed in the affirmative by a vote of nine, Connecticut being divided.[32] The further provisions of Mr. Randolph's resolution, "giving powers necessary to legislate where the harmony of the United States would be interrupted by the exercise of State legislation, and to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaty subsisting under the authority of the Union," having been slightly amended, were all passed without debate.

The last clause of the resolution which authorized an exertion of the force of the Union " against any member thereof failing to do its duty," provoked discussion, and its consideration was postponed on motion of Mr. Madison.[33]

On the 13th of June the Committee of the "Whole made a general report to the Convention, which on the subject of legislative power, provided: " That the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaties substituting under the authority of the Union."[34] Portions of this report were not satisfactory to many members of the Convention. Mr. Sherman moved to substitute for the first portion of it the following: "The legislative power shall be authorized to make laws binding on the people of the United States in all cases which may concern the common interests of the Union, but not to interfere with the government of the individual States in any matters of internal police which respect the government of such States only, and wherein the general welfare of the United States is not concerned." This amendment was seconded by Mr. Wilson, who said "it was a better expression of the general principle" which it was desired to insert in the Constitution. It, however, met with vigorous opposition, and, on being put to vote, was defeated.[35] Mr. Bedford then moved that the second member of the resolution be altered so as to read: "And, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."[36] This amendment was also opposed in the Convention, but, upon being put to vote, was passed and the resolution amended.

The Convention then referred twenty-three resolutions to the Committee of Detail. The sixth resolution, which related to the power of the National Legislature, was as follows: "That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the States are separately incompetent or in which the harmony of the United States may be interrupted by the exercise of individual

legislation."[37] On the sixth of August the Committee of Detail made its report to the Convention, the third Article of which provided that "The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate, each of which shall in all cases have a negative on the other."[38] On the following day, and during the session of the Convention, the consideration of this article was taken up, and Mr. Madison moved to strike out the words "each of which shall in all cases have a negative on the other," which was carried by a vote of seven States for it and three against it. This left the resolution to read:

"The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate."[39] In this shape the resolution, together with the Constitution, which had been agreed upon by the Convention, was referred to the Committee on Style. "When reported back to the Convention by that Committee it appeared in the first article of the Constitution in the form now found in that instrument.[40]

Shall be vested in a Congress of the United States. — In the political and constitutional history of our country the term "Congress" was first applied to a meeting of Commissioners from the Colonies of Massachusetts. Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina, who met in New York City on October 7, 1765, as the result of a resolution introduced in the House of Delegates of Massachusetts by James Otis, favoring the calling of an American Congress to consider resistance to the Stamp Act.[41] Beginning with this meeting each subsequent meeting of representatives from the various colonies was called a Congress. The first Continental Congress met at Philadelphia on the fifth day of September, 1774. A second Continental Congress met in the same city on May 10, 1775. New Hampshire was the first State to adopt a Constitution, which was in December, 1775, and the Convention which framed it was called "Congress."[42]

The Declaration of Independence refers to Representatives of the United States as assembled in "General Congress," and the Articles of Confederation referred to the United States in "Congress assembled." It was natural, therefore, when the framers of the Constitution " met in Convention that the term "Congress" should be inserted in the Constitution as representing the legislative branch of the government of the United States, but prior to that time, it was a comparatively new term in the history of legislation.

Which shall consist of a Senate and House of Representatives. — We have seen that each plan for a Constitution, except that of Mr. Paterson, provided that there should be two houses or branches of Congress and that at the time of the Convention the Constitution of each State provided for a bicameral system except that of Pennsylvania, in which the legislature consisted of only one branch,[43] and there was only one branch in the Colonial Congress and in the Congress under the Articles of Confederation.

Dividing Congress into two branches has been approved by most writers on the Constitution, has received the sanction of the American people, and is considered a wise provision.[44]

Hamilton, discussing this subject in the Federalist, said :

"A single assembly may be a proper receptacle of those slender, or rather, fettered authorities, which have been heretofore delegated to the Federal head; but it would be inconsistent with all the principles of good government, to intrust it with those additional powers which even the moderate and more rational adversaries of the proposed Constitution admit, ought to reside in the United States. If that plan should not be adopted, and if the necessity of union should be able to withstand the ambitious aims of those men, who may indulge magnificent schemes of personal aggrandizement from its dissolution ; the probability would be, that we should run into the project of conferring supplementary powers upon Congress, as they are now constituted. And either the machine, from the intrinsic feebleness of its structure, will molder into pieces, in spite of our ill-judged efforts to prop it; or by successive augmentations of its force and energy, as necessity might prompt, we shall finally accumulate in a single body, all the most important prerogatives of sovereignty; and thus entail upon our posterity, one of the most execrable forms of government that human infatuation ever contrived. Thus we should create in reality, that very tyranny, which the adversaries of the new Constitution, either are, or affect to be solicitous to avert."[45]

A modern writer on constitutional law has furnished a fitting eulogy to the division of Congress into two branches:

"To a popular branch of the legislature, fresh from contact with small constituencies, frequently elected, partaking of the momentary passions and errors of the people, and therefore endeavoring to reflect their immediate wishes, is joined the more conservative Senate; fewer in numbers, with longer duration of office, appointed by the legislatures, and therefore somewhat removed from the fitful flow of the popular will. One house is the force which drives, the other the anchor which holds fast; one is the instrument of progress, the other tempers the vehemence of advance; one communicates speed, the other steadiness."[46]

In 1824 Mr. Madison wrote of the benefit of a second branch of Congress, "A second branch of the legislature consisting of fewer and riper members, deliberating separately and independently of the other, may be expected to correct many errors and inaccuracies in the proceedings of the other, and to control whatever of passion or precipitancy may be found in them; and being in like manner with the other, elective and responsible, the probability is strengthened that the will and interest of their common constituents will be duly pursued. In support of this view of the subject it may be remarked, that there is no instance among us of a change of a double to a single legislature, while there is more than one of a contrary change; and it is believed that if all the States were now to form their governments over again, with lights derived from experience, they would be unanimous in preferring two legislative chambers to a single one."[47]

1. It is said by a scholarly writer on the Constitution that the division of Congress into a Senate and House with the Senate based on the equality of State representation therein, was the most noticeable feature of the Constitution among foreign scholars and statesmen. Princeton Review, Vol. 4, 178.

2. Journal, 64.

3. Journal, 73.

4. Journal, 160.

5. Journal, 444.

6. Journal, 449.

7. Journal, 462.

8. Journal, 700.

9. Mr. Webster in his speech on the Presidential protest, delivered in the Senate of the United States on May 7, 1834, discussed the division of the powers of government as follows:

"The separation of the powers of government into three departments, though all our constitutions profess to be founded on it, has, nevertheless, never been perfectly established in any government of the world, and perhaps never can be.

"The general principle is of inestimable value, and the leading lines of distinction sufficiently plain; yet there are powers of so undecided a character, that they do not seem necessarily to range themselves under either head. And most of our constitutions, too, having laid down the general principle, immediately create exceptions. There do not exist in the general science of government, or the received maxims of political law, such precise definitions as enable us always to say of a given power, whether it be legislative, executive or judicial. And this is one reason, doubtless, why the Constitution, in conferring power on all the departments, proceeds not by general definition, but by specific enumeration. And, again, it grants a power in general terms, but yet, in the same or some other article or section, imposes a limitation or qualification on the grant; and the grant and the limitation must, of course, be construed together. Thus the Constitution says that all legislative power, therein granted, shall be vested in Congress, which Congress shall consist of a Senate and House of Representatives; and yet, in another article, it gives to the President a .qualified negative over all acts of Congress. So the Constitution declares that the judicial power shall be vested in one Supreme Court, and such inferior courts as Congress may establish. It gives, nevertheless, in another provision, judicial power to the Senate; and, in like manner, though it declares that the executive power shall be vested in the President, using, in the immediate context, no words of limitation, yet it elsewhere subjects the treaty-making power, and the appointing power to the concurrence

of the Senate. The irresistible inference from these considerations is that the mere nomination of a department, as one of the three great and commonly acknowledged departments of government, does not confer on that department any power at all. Notwithstanding the departments are called the legislative, the executive and the judicial, we must yet look into the provisions of the Constitution itself, in order to learn, first, what powers the Constitution regards as legislative, executive and judicial, and, in the next place, what portions, or quantities of these powers are conferred on the respective departments; because no one will contend that *all* legislative power belongs to Congress, *all* executive power to the President, or *all* judicial power to the courts of the United States.

"The first three articles of the Constitution, as all know, are taken up in prescribing the organization, and enumerating the powers of the three departments. The first article treats of the legislature, and its first section is, 'All legislative power, *herein granted,* shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.'

"The second article treats of the executive power, and its first section declares that the executive power shall be vested in a President of the United States of America.

"The third article treats of the judicial power, and its first section declares that '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.'

"It is too plain to be doubted, I think, sir, that these descriptions of the persons or officers in whom the executive and the judicial powers are to be vested no more define the extent of the grant of those powers, than the words quoted from the first article describe the extent of the legislative grant to Congress. All these several titles, heads of articles, or introductory clauses, with the general declarations which they contain, serve to designate the departments, and to mark the general distribution of powers; but in all the departments, in the executive and judicial as well as in the legislative, it would be unsafe to contend for any specific power under such clauses." Webster's Works, Vol. 4, 123-125.

10. Hayburn's Case, 2 Dallas, 11.

11. Madison's Writings, Vol. 4, 293-294.

12. Journal, 62.

13. Journal, 64.

14. Journal, 164.

15. Journal, 185.

16. Journal, 83.

17. Locke on Government, cited in 1st Thayer's Const. Cases, 30.

18. 146 U. S., 1-25.

19. Giozza v. Tierman, 148 U. S., 661.

20. Burton v. United States, 202 U. S., 367.

21. An important question arose under this section at a very early period in our National history.

The act of Congress of March 23, 1792, provided that the Circuit Court of each district should determine the amount of pension which should be allowed in certain cases, and that the Court should examine into the nature of the wound or other cause of disability of the applicant, and transmit the result of their inquiry to the Secretary of War, who was given power to revise the inquiry of the Court in certain cases. The court in each of these districts declined to perform the duties which the act of Congress required of them, because they were not of a judicial character.

The Circuit Court for the district of Pennsylvania, consisting of Wilson and Blair, Justices, and Peters, D. J., on the 18th of April, 1792, addressed the following letter to President Washington on the subject:

"To you it officially belongs to 'take care that the laws of the United States be faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments, which, on a late, painful occasion governed us in regard to an act passed by the Legislature of the Union.

"The people, of the United States have vested in Congress all *legislative* powers 'granted in the Constitution.'

"They have vested in one Supreme Court, and in such inferior courts as the Congress shall establish, 'the judicial power of the United States.'

"It is worthy of remark, that in Congress, the *whole* legislative power of the United States is not vested. An important part of that power was exercised by the people themselves, when they 'ordained and established the Constitution.'

"This Constitution is the 'Supreme Law of the land.' This supreme law 'all judicial officers of the United States' are bound, by oath or affirmation, 'to support.'

"It is a principle important to freedom that, in government, the Judicial should be distinct from, and independent of, the legislative department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.

"They have placed their *judicial* power not in Congress, but in 'Courts.' They have ordained that the 'Judges of those courts shall hold their offices during good behavior,' and that 'during their continuance in office, their salaries shall not be diminished.'

"Congress have lately passed an act, to regulate, among other things, 'the claims to invalid pensions.'

"Upon due consideration, we have been unanimously of opinion that, under this act, the Circuit Court held for the Pennsylvania District could not proceed.

"First. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States; the Circuit Court must, consequently, have proceeded *without* constitutional authority.

"Second. Because, if, upon that business, the court had proceeded, its *judgments* (*for its opinions* are its judgments) might, under the same act, have been revised and controlled by the Legislature, and by an officer in the Executive department. Such revision and control we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and, consequently, with that important principle which is so strictly observed by the Constitution of the United States.

"These, Sir, are the reasons of our conduct. Be assured that, though it became necessary, it was far from being pleasant. To be obliged to act contrary, either to the obvious directions of Congress, or to a constitutional principle, in our judgment equally obvious, excites feelings in us, which we hope never to experience again."

The Circuit Courts of North Carolina and of New York addressed a similar letter to President Washington and made similar protests, against being required to act officially under the law passed by Congress. 2 Dallas, 411.

22. Hayburn's Case, 2 Dallas, 409.

23. United States v. Harris. 106 U. S., 635.

24. McCulloch v. Maryland, 4 Wheaton, 421.

25. 110 U. S., 652.

26. 143 U. S., 692.

27. 143 U. S., 693.

28. United States v. Eaton, 144 U. S., 688.

29. St. L. & C. Railway Co. v. Taylor, 210 U. S., 281. Morrill v. Jones, 106 U. S., 466-7. Union Bridge Co. v. U. S., 204 U. S., 364, 382.

30. 165 U. S., 537.

31. Journal, 83.

32. Journal, 84.

33. Journal, 84.

34. Journal, 161.

35. Journal, 361.

36. Journal, 362.

37. Journal, 445.

38. Journal, 449.

39. Journal, 463, 464.

40. Journal, 700.

41. Towle's Analysis of the Constitution, 307.

42. Fisher's Evolution of the Constitution, 71, 72.

43. Pitkin's History, Vol. 2, 294.

44. 1st Kent's Common., 229; Story on the Const., Vol. 1, Sec. 560.

45. The Federalist, No. 22.

46. Pomeroy's Constitutional Law, 124, Bennett's Ed.

47. Madison's Writings, Vol. 3, 355, 356.

Jefferson, who was in France when the Constitutional Convention was in session, upon his return to the United States, was taking breakfast with Washington, when the subject of there being two branches of Congress came up for discussion. Jefferson was opposed to it and was disposed to twit Washington about it. Just at this time he poured his coffee from his cup into his saucer. Washington asked him why he did so? "To cool it," replied Jefferson. "So," said Washington, "we will pour legislation into the Senatorial saucer to cool it." Conway's Life of Randolph, 91. Jefferson does not seem to have been consistent in this matter. He favored the general assembly of Virginia being divided into two bodies, and in 1789 wrote as follows on the subject: "The purpose of establishing different houses of legislation is to introduce the influence of different interests, or different

principles. Thus, in Great Britain it is said their Constitution relies on the House of Commons for honesty, and the Lords for wisdom; which would be a rational reliance if honesty were to be bought for money, and if wisdom were hereditary." Jefferson Notes on Virginia, 160. In 1787 Jefferson wrote John Adams: "The first principle of a good government is certainly a distribution of its powers into executive, judiciary, and legislative, and a sub-division of the latter into two or three branches." Forman's Life of Jefferson, 233.

CHAPTER VI.

THE HOUSE OF REPRESENTATIVES — QUALIFICATIONS OF ELECTORS.

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.

This clause and the remaining clauses of the section relate to the House of Representatives, its composition, the qualifications of its members, by whom they are elected, and their apportionment, the filling of vacancies in its representation, and the choosing of its officers.

The House of Representatives. — This term was probably first used in the New Hampshire Constitution framed in 1775 and 1776.

The House of Representatives is that branch of Congress whose members are chosen every second year by the electors of the several States.

In the plan for a Constitution proposed by Mr. Randolph, the corresponding expression was, "The first branch of the National Legislature."[1] In Mr. Pinckney's plan it was, the "House of Delegates."[2] Mr. Paterson, in his plan, following the Articles of Confederation, used simply the word "Congress."[3] In Mr. Hamilton's plan the expression was "The Assembly."[4] The term, "House of Representatives," was not adopted by the Convention until a comparatively short time before its adjournment, and the expression first occurred in the Convention in a report made by Mr. Rutledge, as Chairman of the Committee of Detail, on

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1. Journal, 61.

2. Journal, 64.

3. Journal, 164.

4. Journal, 185.

CHAPTER XXV.

THE POLICE POWER.

The Constitution contains no provision relative to the police power. But it is so intimately connected with certain principles emanating from the Constitution that a reference to it seems appropriate, especially in connection with the rules governing interstate commerce, for it is along this line that the conflict between the Government, and the States is most frequent, and most to be feared, for if the reserved rights of the States are invaded by congressional, judicial, or executive action, that invasion will result from the construction of the commerce clause of the Constitution. So far the great conservative force which has preserved the balance and equilibrium between national and State authority on this subject has been the judiciary. Attempts have been made in the legislative and executive branches of the Government to carry the doctrine to a dangerous extent and if they had been successful much of the power which has always been regarded as belonging to the States relating to the control and government of their domestic affairs would have been swept away.

In the Convention it was attempted to establish a fair boundary line of demarcation between the general government in its sovereign capacity and the States in their sovereign capacity beyond which neither could go; but the attempt failed.[1]

The sixth resolution of the report of the Committee of the "Whole contained a provision that "the National Legislature ought to be empowered to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."[2]

When this was before the Convention Mr. Sherman stated that it would be difficult to draw the line between the powers of the General Legislature, and those to be left with the States; that he did not like the definition contained in the resolution; and proposed the following as a substitute: The National Legislature should have power "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union; but not to interfere with the government of the individual States in any matters of internal police which respect the government of such States only, and wherein the general welfare of the United States is not concerned."[3]

This was seconded by Mr. Wilson, but Gouverneur Morris opposed it, and it was defeated by a vote of two in its favor to eight against it.[4]

Mr. Bedford then moved that the second part of the sixth resolution be amended to read, "And moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."[5] This amendment was seconded by Mr. Morris, but to this Mr. Randolph strenuously objected. He said it involved the power of violating all the laws and Constitutions of the States, and of intermeddling with their police; but it was agreed to by eight States voting for it to two against it.[6]

At a much later date in the Convention Mr. Rutledge, as chairman of the committee to whom certain resolutions had been referred, reported that Mr. Bedford's resolution should be amended to read as follows: "And to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual States, in matters which respect only their internal police, or for which their individual authority may be competent."[7]

This provision would doubtless have established a satis-. factory line of demarcation, between the general government and the States, but it failed to be incorporated into the Constitution'and so did the amendment proposed by Mr. Bedford and the Constitution as finally adopted and ratified makes no provision on this important subject.

On the 12th of June, 1823, Jefferson wrote from Monticello, "Can it be believed that under the jealousies prevailing against the General Government at the adoption of the Constitution, the States meant to surrender the authority of preserving order, of enforcing moral duties, and restraining vice, within their own territory?"[8]

If this language could have been incorporated into a judicial opinion at the time it was written it would have been a proper basis for the doctrine which has generally become known as the police power.

The term "police power," is of modern origin, although the principle upon which it is based is old. The term "police" comes from the Greek "polis" — meaning city, and the transition from this definition to the government of a city is both easy and natural, and it is not difficult, then, to see how the term came to mean what the courts have said it does mean, though no fixed or settled definition has ever been adopted by the courts.

A distinguished writer says,[9] "The term appears to have been first used in the United States by Mr. Justice Story in Prigg v. Pennsylvania,[10] decided in 1842." It may be that the actual words "police power" were used in that case by Mr. Justice Story, but the same distinguished jurist discussed the general doctrine in 1837 in his dissenting opinion in City of New York v. Miln,[11] where he used the term "police laws."

Nearly twenty years before the decision in Prigg v. Pennsylvania, Chief Justice Marshall in Gibbons v. Ogden,[12] had used this language: "The acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens, may enable it to

legislate on this subject, to a considerable extent." This is certainly a plain and direct recognition of the doctrine of the police power.

But little can be done in this work beyond giving some pertinent definitions of this term and showing the general relation of the subject to the States and the federal government.

Though the term is modern it has already reached the importance of being the subject of separate works where it is discussed with much learning, and the student must have recourse to those works to obtain a full and complete knowledge of the subject.

Definitions of Police Power. — Blackstone defined the public police to be "the due regulation and domestic order of the kingdom, whereby the individuals of the State, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious and inoffensive in their respective stations."[13] In this statement we find the germ of the police power, which in the growth and development of the law has become applicable to almost every condition of society.

In Commonwealth v. Alger,[14] Shaw, C. J., held: "The police power is that power vested in the legislature by the Constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same. It is easier to perceive and realize the existence and sources of this power, than to mark its boundaries, or prescribe limits to its exercise. There are many cases in which such a power is exercised by all well ordered governments, and where its fitness is so obvious, that all well regulated minds will regard it as reasonable. Such are the laws to prohibit the use of warehouses for the storage of gunpowder near habitations or highways; to restrain the height to which wooden buildings may be erected in populous neighborhoods, and .require them to be covered with slate or other incombustible material; to prohibit buildings from being used for hospitals for contagious diseases, or for the carrying on of noxious or offensive trades; to prohibit the raising of a dam, and causing stagnant water to spread over meadows, near inhabited villages, thereby raising noxious exhalations, injurious to health and dangerous to life."

Redfield, C. J., in Thorpe v. E. & B. R. Co.,[15] said, "There is a police power of a State which extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. There is also the general police power of the State, by which persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State."

In Commonwealth v. Vrooman,[16] it was said, "The police power is inherent in all forms of government, its exercise may be limited by the frame or Constitution of a particular government, but its natural limitations, in the absence of a written Constitution, are found in the situation and necessities of the State, and these must be judged of in the first

instance by the government itself. It corresponds to the right of self-preservation in the individual. "When the dangers that threaten the State come from without, the right of self-preservation is exercised in gathering armies and the means of public defense. When the dangers arise within the State, self-preservation requires their suppression. This is accomplished by the exercise of the police power which deals with all forms of disorder, and provides for the public welfare and the protection of citizens against the violence and fraudulent conduct of each other."

It was held in Chamber v. Greencastle,[17] "The police power of the State, so far, has not received a full and complete definition. It may be said, however, to be the right of the State, or State functionary, to prescribe regulations for the good order, peace, health, protection, comfort, convenience and morals of the community, which do not encroach on a like power vested in Congress by the federal Constitution, or which do not violate any. of the provisions of the organic law. Of this power it may be said, that it is known when and where it begins, but not when and where it terminates."

The following are cited as a few illustrations of the proper exercise of the police power by the States: the control of the erection of bill boards,[18] regulating the sale of an article injurious to public morals,[19] the regulation of the sale of intoxicating liquors,[20] the regulation of offensive trades,[21] prohibiting the use of soft coal in certain localities,[22] regulating the use of a steam carpet machine,[23] regulating the right to practice law,[24] prohibiting the sale of adulterated milk,[25] or the passage of a law preventing imposition and fraud.[26] In fact this power is so universal in its application that it extends from the power of the legislature to make an appropriation for killing a coyote,[27] or regulating horse racing,[28] to requiring an interstate train to stop at county seats.[29] A State in the exercise of its police power may prohibit the dealing in game in certain seasons of the year, though it was transported from another State, and the exercise of this power will not be restrained when it is within the constitutional authority of a State, because it remotely interferes with interstate commerce.[30]

To regulate their own internal affairs was a right which the States never surrendered to the general government, but in attempting such regulation it was a serious question at times whether the States did not trespass upon federal grounds, and in turn it is equally a serious question whether the federal courts and Congress have not trespassed upon State territory, so dim and shadowy is the true line of demarcation between the two sovereignties. When four justices of the Supreme Court of the United States say, as in the case of Lake Shore & Michigan Southern Railway v. Ohio,[31] that the exercise of certain power by a State was a violation of interstate commerce, and five justices say it was not, it need not occasion surprise if, in occasional instances the line between what is the exercise of police power on the part of the States, and on the part of the general" government is difficult to establish.

The general doctrine of the police power is broadly stated by Mr. Justice Brown in Lawton v. Steele.[32] "The extent and limits of what is "known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety,

health and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests." As to what will justify the State in interposing its authority in behalf of society the opinion proceeds, "It must appear, first that the interests of the public generally, as distinguished from those of a particular class require such interference; and, second, that the means are .reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts. Thus an act requiring the master of a vessel arriving from a foreign port to report the name, birthplace, and occupation of every passenger, and the owner of such vessel to give a bond for every passenger so reported, conditioned to indemnify the State against any expense for the support of the persons named for four years thereafter, was held by this court to be indefensible as an exercise of the police power, and to be void as interfering with the right of Congress to regulate commerce with foreign nations. Henderson v. New York, 92 U. S. 259. A similar statute of California, requiring a bond for certain classes of passengers described, among which were 'lewd and debauched women,' was also held to show very clearly that the purpose was to extort money from a large class of passengers, or to prevent their immigration to California altogether, and was held to invade the right of Congress. Chy Lung v. Freeman, 92 U. S., 275. So in Railroad Co. v. Husen, 95 U. S. 465, a statute of Missouri which prohibited the driving of Texas, Mexican, or Indian cattle into the State between certain dates in each year was held to be in conflict with the commerce clause of the Constitution, and not a legitimate exercise of the police powers of the State, though it was admitted that the State might for its self-protection prevent persons or animals having contagious diseases from entering its territory.

Recognition of Police Power by the Federal Courts. — Most of the conflicting questions on the subject of police power in the federal courts have grown out of the exercise of power by Congress under the interstate commerce clause of the Constitution. The States in regulating their domestic affairs exercise substantially the same power that the general government exercises under this clause of our organic law.

It is a general principle that the State may regulate those things which affect the life, health, or morals of its citizens.[33]

Thus the rule was declared in Railroad Co. v. Husen,[34] by Mr. Justice Strong, to be: "A State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; and it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering its limits; it may also for the purpose of self-protection establish quarantine, and reasonable inspection laws."

So a State may regulate the number of hours which a person may work in a day,[35] and a State statute providing that the transportation of freight on the Sabbath day should be suspended was held to be a proper exercise of the police power.[36]

In C. B. & Q. Ry. Co. v. People[37] the court recognized a broader principle. Under the laws of Illinois certain officials were charged with the duty of causing a large body of wet land to be drained for agricultural purposes. In pursuance of their authority they prepared a plan which required that the channel of a natural watercourse running through said lands over which a railroad company had previously constructed a bridge at its own expense should be enlarged and deepened. The plan could not be executed unless the foundation of the railroad company's bridge which had been constructed over this watercourse had been removed and the channel widened and deepened and the railroad company were ordered to do this. The company contended that it had erected its bridge in pursuance of law at its own expense and that the foundation at the time the bridge was erected had been constructed according to the required directions, and that the company could not now be required to change it without compensation first being paid. It was contended that the police power of the State was not broad enough to compel the company to remove the foundation of the bridge at their own expense, as that power related to public health, public morals and public safety, and that none of these principles were involved in the case. But this doctrine was rejected and it was held by the Supreme Court of the United States that the police power of a State embraces regulations designed to promote the public convenience or general prosperity as well as regulations designed to promote the public health, public morals, or the public safety, and that the validity of the police power, whether established directly by the State, or by some public body or corporation acting under the direction of the State, depends upon the circumstances of each case and the character of the regulation, whether it be arbitrary or reasonable, and designed to accomplish the proper public purpose. The act of the Illinois legislature was held to be a proper exercise of the police power, requiring the company to remove the foundations of the bridge and to erect new ones.

The States have power to provide by law suitable measures to prevent the introduction within their limits of articles of trade, which, on account of their condition, would bring in and spread disease, pestilence and death, such as rags, or other substances infected with the germs of yellow fever or the virus of small-pox, or meat, or other provisions that are diseased or decayed, or otherwise unfit from their condition and quality for human use, or consumption.[38]

So a state in the exercise of its police power may pass inspection laws which have for their object the protection of the community against fraud and to promote the welfare of the people.[39]

A law of Idaho provided that it should be unlawful for any person to herd sheep on the lands of another or within two miles of any dwelling house other than that of the owner of the sheep. The Supreme Court of the United States said this was a proper exercise of the police power of the State, as that power included the right to promote the public convenience or general prosperity as well as regulations to promote the public health, public morals, or the public surety.[40]

So a State may regulate its places of public amusement, as to its charges of admission upon terms of justice to all who hold tickets of admission, who are not at the time in a condition of intoxication, or boisterous, or improper in their conduct. All this is the proper exercise by the State of its police power.[41]

In pursuance of the exercise of its police power a State can change the rule of the common law as to master and servant, and when a case falls within the correct exercise of the police power, the State can enact laws making the master liable for such wilful acts of his employee as result in injury to others.[42]

It is competent for a State under its police power to regulate the number of hours which women shall work in a day.[43]

Nor is it an objection to the proper exercise of the police power by a State that an ordinance passed in pursuance of a State statute produces a revenue. The police power of the State is extensive and is often resorted to though it results in raising revenue.[44]

A State under its police power may enact a law which guards against bringing cattle or other animals within its limits which are infected with a disease which can be transmitted to other animals though it restricts the freedom of interstate commerce in stock to the extent that all stock brought across the State lines are subjected to inspection in order to leam if they are sound in health.[45] So an act of a State legislature which required that notes given for patented articles must show on their face that they were given for such an article, and allow-ing third parties to defend against such notes is a proper and valid exercise of the police power and is not affected by a provision that the act shall not apply to dealers who sell such articles in the usual course of their business.[46] The right to exercise the police power is a continuing one and can not be contracted away, and persons or companies may be required to comply with reasonable police regulations without compensation, and such requirement can be made without impairing the obligation of contracts.[47]

The Legislature of New York passed an act which provided: "No employe shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor

more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employe shall work."

A person was indicted and convicted of a violation of this section. The Courts of the State of New York affirmed the conviction, but the Supreme Court of the United States reversed the judgment.

In delivering the opinion of the Court Mr. Justice Peckham said (p. 54): "When a State has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are *sui juris* (both employer and employe), it becomes of great importance to determine which shall prevail — the right of the individual to labor for such time as he may choose, or the right of the State to prevent the individual from laboring or from entering into any contract to labor, beyond a certain time prescribed by the State."

Again (p. 57), "There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. It is a question of which of two powers or rights shall prevail — the power of the State to legislate or the right of the individual to liberty of person and freedom of contract.

"We think (p. 58), the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employe, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go.

"The real object and purpose of the statute of New York was to regulate the hours of labor between the master and his employes in a private business, not dangerous in any degree to morals or in any real and substantial degree, to the health of the employes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, can not be prohibited or interfered with, without violating the Federal Constitution" (p. 64).

The statute of New York was accordingly declared to be a violation of the Federal Constitution.[48]

The police power of a State is measured by its right to control or regulate domestic products.[49]

"The States did not surrender what is commonly called the police power when becoming members of the Union. "While the Supreme Court of the United States has always refrained from attempting to define the limits of the police power, it has, on the other hand, always recognized the authority of the States to pass quarantine laws and 'health laws of every description,' and laws that relate to matters wholly within their territory, and which do not, by their necessary operation, affect the people of other States. It is undoubtedly a settled principle that the police power of a State embraces such reasonable regulations established by legislative enactment as will protect the public health and the public safety, and it is equally true that the State may invest local bodies existing for purposes of local administration with authority in some appropriate way to protect the public health and public safety, but any local enactment or regulation, though based on the acknowledged police powers of the State must yield in case it comes in contact with the exercise by the general government of any power it possesses under the Constitution, or with any right which that instrument gives or secures. The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances wholly free from restraint, for there are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. . . . Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. It is an established principle 'that persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the States.' It was accordingly held that it is within the police power of a State to require compulsory vaccination of all persons."[50]

Legislation for the safety, welfare and health of the community may be passed under the police power of the State and legislation against the. evils which result from the sale of intoxicating liquors by regulation of the traffic, is clearly within the exercise of such power by the legislature.[51]

Notwithstanding the recognized doctrine, first, that Congress can exercise no power except what is expressly conferred upon it or necessarily implied, and, second, that the powers which were not expressly granted to Congress by the States were reserved to the exercise of the States, and that among these powers was the right to regulate their domestic affairs, renewed attempts have been made before Congress to incorporate amendments to the Constitution which would permit that body to regulate many matters which are clearly within the right of the States to regulate and control under a proper exercise of their police power. Illustrations of this character may be found in the efforts which have been made to amend the Constitution so as to give Congress the right to legislate concerning labor performed in the States subject to State control, and Congress has already provided that eight hours should constitute a day's labor on government contracts, and has prohibited the employment of convict labor on such contracts.

An amendment to the Constitution was proposed in 1884 which would have given Congress the power to designate the number of hours persons should labor in the States who were engaged in the manufacture of "textile fabrics and in other industries." The amendment has been introduced in Congress a number of times since, but has never been favorably acted upon.[52]

There have also been several attempts to secure amendments to the Constitution by which Congress could regulate the subject of education in the States, although the

Convention which framed the Constitution refused to insert in that instrument a provision for the establishment of a national university, which was embraced in Mr. Pinckney's plan for a Constitution,[53] and was one of the powers which Mr. Madison desired to have inserted in the Constitution.[54] Mr. Madison and Mr. Pinckney moved to insert "that Congress have power to establish a university, in which no preferences' or distinctions should be allowed on account of religion" and this motion was supported by Mr.. Wilson,[55] but it was defeated by a vote of four to six.[56]

All this shows that it was the purpose of the framers of the Constitution that the subject of education should be left exclusively to the States.

An amendment to the Constitution giving Congress power to regulate labor and control education in the States, within the purview of these proposed amendments would go far towards destroying their reserved power. That no such amendment has been passed by Congress indicates that the conservative element of that body may be relied upon to prevent such dangerous encroachments upon the power of the States.

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1. It is somewhat singular that the principal support which the attempt to establish a line of demarcation between National and State power received in the Convention came from the Northern States, although it has always been considered that the Southern States in the Convention represented strong States' Rights doctrine. Mr. Sherman and Mr. Wilson, who were the leading advocates of this principle came respectively from Connecticut and Pennsylvania.

2. Journal, 161.

3. Journal, 361.

4. Journal, 362.

5. Journal, 362.

6. Journal, 362.

7. Journal, 585.

8. Jefferson's Correspondence, vol. 4, 374.

9. Russell on Police Power, 24.

10. 16 Peters, 539.

11. 11 Peters, 156.

12. 9 Wheaton, 208.

13. 4 Blackstone, 162.

14. 7 Cushing, 85.

15. 27 Vt., 149-150.

16. 164 Pa. St., 316.

17. 138 Ind., 351.

18. City of Rochester v. West, 164 N. Y., 513.

19. State v. Gurney, 37 Maine, 156.

20. Foster v. Police Commissioners, 102 California, 491.

21. Taunton v. Taylor, 116 Mass., 260.

22. City of Brooklyn v. Nassau El. R. R. Co., 44 N. Y. App. Div., 465.

23. Ex parte Lacey, 108 Cal., 328.

24. In re Day, 181 111., 97.

25. State v. Schlenker, 112 Iowa, 648.

26. People v. Wagner, 86 Mich., 600.

27. Ingram v. Colgan, 106 Cal., 113-123.

28. State ex rel. v. Roby et al., 142 Ind., 168.

29. Lake Shore & Mich. South. Ry. v. Ohio, 173 U. S., 285.

30. Silz v. Hesterberg, Sheriff, 211 U. S., 31, 41.

31. 173 U. S., 285.

32. 152 U. S., 133-136.

33. Robinson v. Shelby Taxing District, 120 U. S., 489, 496.

34. 95 U. S., 472.

35. Holden v. Hardy, 169 U.. S., 380.

36. Hennington v. Georgia, 163 U. S., 299-317.

37. 200 U. S., 561-93.

38. Bowman v. Chicago, etc., Ry. Co., 125 U. S., 489.

39. McLean v. Denver et al. R. R. Go., 203 U. S., 38-54.

40. Bacon v. Walker, 204 U. S., 311-317.

41. Western Turf Assn. v. Greenberg, 204 U. S., 359, 363-364.

42. Wilmington Mining Co. v. Fulton, 205 U. S., 60-73-74.

43. Muller v. Oregon, 208 U. S., 412-421-422.

44. Phillips v. Mobile, 208 U. S., 472-79.

45. Asbel v. Kansas, 209 U. 8., 251-54.

46. Ozan Lumber Co. v. Union County Nat'1 Bank, 207 U. S., 251-257.

47. Northern Pac. Ry. Co. v. Duluth, 208 U. S., 583-596.

48. Lochner v. New York, 198 U. S., 45.

49. Pabst Brewing Co. v. Crenshaw, 198 U. S., 27.

50. Jacobson v. Massachusetts, 197 U. S., 11-25-26-37.

51. Ambrosini v. United States, 187 U. S., 1-6.

52. Ames on Amendments, 273.

53. Journal, 68.

54. Journal, 550.

55. Journal, 726.

56. Journal, 727.

Washington favored the establishment of a national university at Washington City, and to aid in the accomplishment of such an object provided in his will that certain of his property should be sold and the proceeds used for that purpose. One reason for wishing the university at the seat of government was that the students could attend the debates in Congress and become familiar with the principles of law and government. Writings of Washington, Vol. XI, 2, 4, 24.