BRIEF VIEW OF THE CONSTITUTION OF THE UNITED STATES

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CATEGORY: LAW AND LEGAL – CONSTITUTIONAL LAW

A BRIEF VIEW
OF THE
CONSTITUTION
OF THE
UNITED STATES

Addressed to the Law Academy of Philadelphia

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PREFACE.

THIS little work has no pretensions, save that of brevity and clearness. It is intended for the benefit of youth, of the general reader, and of foreigners. I believe that no attempt of the kind has yet been made; I mean on so limited a scale. I have endeavoured by a method of my own, to compress in plain and popular language, the prominent features of our excellent constitution in as small a space as possible, and at the same time to avoid obscurity. Whether I have succeeded or not, it is for the reader to determine.

I have addressed this essay (for it claims no higher title) to the *Law Academy of Philadelphia*. For more than fourteen years I have had the honour of being at the head of that useful institution, who, during that time have been zealously pursuing their steady course, and whose members have enriched the legal profession with several valuable works. It is not so much for their instruction that I have presented them with this result of my studies, as that they might see in it a tribute of friendship and a testimony of my constant attachment, and of the pleasure that I feel in being connected with them. Yet I have thought that this brief view of our constitution might not be useless to their younger members, as an introduction to the more elaborate works which they will be called upon to study. It will smooth their way to a more profound investigation of the rules and principles of our admirable form of government.

The method which I have followed to attain the object which I had in view, is, I believe, entirely new. I do not by any means pretend that it is preferable to that which has been adopted by other writers; I only can say that I found it better suited to my purpose, which I have already explained. Had I written with other and more ambitious views, I would, of course, have endeavoured to adapt my method to them, as our great writers on the constitution have very properly and successfully done.

I have treated separately and in the first place, of the *organization* of the government, by which I mean its great division into legislative, executive and judicial departments; its consequent subdivisions; its subordinate officers; the various modes of election and appointment to office; the periods of service; the modes of action of those different authorities, and a variety of matter of detail, constituting together what might be called the *mechanical* part of the government. In the text of the constitution those matters are mixed with other provisions; I have thought best to present them in a separate view.

These being disposed of, I have proceeded to the enumeration and distribution of powers, rights and duties between the general government and the states, *reddendo singula singulis*, and so as to give a clear view not only of the division of power between the union and the individual states, but of its distribution between the different branches which compose the aggregate authority of the former. I have classed these under general heads, with reference to the different subjects on which power is or may be exercised; in which division or classification I have followed no precedent, because I found none which, in my opinion, could so well answer my purpose as the arrangement which I have adopted. By this means I have been enabled to condense a great deal more matter in a small space than I could otherwise have done. I have even been able to introduce a few occasional reflections, and to deduce a few corollaries from the text of the constitution, which do not appear on the face of the instrument. But of these I have been very sparing; and the reader will recollect that it is not an abstract, but a *view* of the constitution that I here present to the public, and consequently, that where the text, in consequence of different opinions having been entertained about its meaning, appeared to require some explanation, it behoved me to give that which appeared to me to be most consonant to its spirit.

I have prefaced the whole work with two preliminary chapters, in one of which I have endeavoured to give a clear view of the political state of this country under the colonial government and under the confederation, with which in the other chapter I have compared our present constitution, in order to facilitate its intelligence, by pointing out the objects that its framers had in view. In an appendix, I have given the text of the Constitution, with its amendments, and the Articles of Confederation and Perpetual Union, which preceded it. To these I have added the Declaration of Independence, and the Farewell Address of our immortal Washington, considering them as indispensable documents to the student of our constitution, and of our constitutional history.

I have not included in this short sketch much of what is called *constitutional law*. It is a separate science, depending on acts of legislation, which may be altered from day to day. Even the decisions of the supreme court of the United States, on constitutional points, have been questioned, after being acquiesced in for many years. I have, in a few instances, touched on some of those questions; the whole subject, however, I have not considered to be within my plan. *A brief view* of the constitution could not admit of it.

I have considered the constitution and its amendments us one instrument, and therefore I have not generally distinguished the provisions of the former from those of the latter. A reference to the text will show the sources whence my positions are derived. The student

should make himself familiar with it. This work is only intended to facilitate its study, and to give a general view of it to those who do not wish to go farther. I believe that the text and the works of its able commentators, will be studied with more ease after reading this little tract than they would be without it.

I have, as much as possible, used the words and phraseology of the constitution in stating its contents; but the reader will easily perceive that it was not always in my power so to do consistently with the arrangement which I have adopted. But I have never knowingly, at least, varied from the exact sense.

Such is the plan I have pursued, and which I submit to the candour and indulgence of my readers.

Having thus explained the design of this essay, and the method which I have followed, I hope I shall be excused, if I subjoin a few reflections, which an attentive study of our constitution and forty-five years' experience under it, have suggested to me. It will be remembered that I write principally for youth, that they may be enabled, when they grow up to manhood, to avoid the errors which experience has shown us to be the most dangerous to the permanency of our Union. The *duration of empires* has been considered by statesmen and patriots in all countries and in all ages, as the most important object to which the policy of nations should be directed. *Esto perpetua*, was the last fervent wish of the excellent Father Paul, on behalf of his beloved Venice. It was also the last wish of our illustrious Washington. It breathes through every line of his admirable Farewell Address to the people of the United States. Therefore, the first and last wish of every good citizen, is or ought to be *the perpetuity of our Union*. It has not yet lasted *half a century*; and during that short period, it has sustained many shocks that have endangered its existence. Those dangers have been surmounted by the good sense and the virtue of the people; but the political, like the natural body, is not immortal, and it will sink at last, if efficient means are not taken to prevent the recurrence of those disorders, which gradually weaken it, and must at last operate its dissolution.

The cause of those disorders is chiefly to be traced to the too great prevalence of party spirit. I admit that parties, when kept within moderate bounds, are a wholesome ingredient in a free community; but they are a deadly poison, when carried to excess; particularly when they are not so much founded on the difference of political opinions, as on a blind attachment to popular leaders. The Roman republic was near her fall, when parties came to be distinguished by the names of Sylla and Marius, and of Cæsar and Pompey. Those leaders usurped all the power, and were followed by a succession of tyrants. In the bright days of our commonwealth, we never heard of Washington-men, nor of Adams, Jefferson or Madison-men. The true republican citizen is neither of Paul nor of Apollos;* he is no man's man; he is his country's man and his own man. No man, however great or illustrious should be identified with virtues or with principles. It leads in religion to idolatry, and in politics to submission to despotism.

* 1 Cor. 1. xii.

Among the evil consequences which follow from party spirit carried to excess, is a lamentable fluctuation in the maxims and policy of the government. These suddenly change, as one party obtains the ascendancy over the other, and foreigners, as well as citizens, do not know any more what to rely on. The decrees of legislative assemblies, the decisions of supreme tribunals, a long acquiescence in those decrees and decisions; all those things are set at nought to serve the views of party leaders. The country must be again agitated with questions which were believed to be at rest, to be agitated again when the opposite party shall have acquired the supremacy. It is impossible, that amidst such frequent changes, a country should long continue to be happy at home and respectable abroad.

The mischievous effects of a mutable policy in a republic, are well depicted in the 62d number of the Federalist. "Those," says the eloquent writer, "would fill a volume. It forfeits the respect and confidence of other nations, lays us open to their intrigues, and make us a prey to those who have an interest in speculating on our fluctuating councils and embarrassed affairs. At home it destroys confidence in our government, kills the spirit of enterprise, which no longer knows on what to rely; and what is most deplorable is that diminution of reverence and attachment which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will be long respected, without being truly respectable, nor be truly respectable without order and stability."

I have abridged this admirable passage, and recommend to the reader to turn to the original, which will well repay his trouble. I regret to be obliged to say that we have experienced more than once this fluctuation of policy, and that at this moment we are again in danger of suffering from its baneful effects. Questions have been and are still agitated that make us tremble for the stability of our institutions.

Standing as I do, unconnected with any party, I have not hesitated, when occasion has offered, to express my opinion freely on some of those points. On one particularly, the renewed discussion of which, after a long acquiescence, agitates the country from one end to the other, I have thought it my duty, as a constitutional writer, to be clear and explicit. I allude to the subject of a National Bank. Its constitutionality I have long considered as settled by the competent authorities, and acquiesced in by the people at large; of its expediency I am fully convinced. I consider it necessary under our form of government not only to regulate the currency, chiefly consisting of bills of credit, issued under the authority of twenty-four different states, but also to preserve a due equality among those states. As the subject, to my knowledge, has not yet been present in in this last point of view, I hope I shall be excused if I explain myself somewhat more at large upon it.

One of the objects of our constitution is to maintain equality among the states, as that of the state constitutions is to preserve it among the individuals that compose them. With this view, no doubt, the senate has been established, and republican forms of government are mutually guaranteed. The principle of equality which these imply is not less necessary

among United or confederated states than among individual citizens. These United States are advancing in power and riches to an astonishing, but not in an equal degree. The constitution was intended to be so organized that no single state and no combination of states should acquire an undue ascendancy over the rest. There is a tendency to that effect in all confederated states. It is well known that, in former times, Holland possessed such an ascendancy in the confederation of the United Netherlands, and the Canton of Berne in that of Switzerland. At this day Austria predominates in confederated Germany, and her will is the law of the less powerful states; the struggles of Athens and Sparta for the supremacy over the republics of Greece, and the bloody wars to which they gave rise, can never be forgotten. The same danger threatens us unless ambitious states are prevented from rising above the others. Our states are, with few exceptions nearly equal in territory; but there is a great difference in their means of acquiring riches, and that difference arises from certain natural advantages.. Riches give influence and influence leads to power. The means by which it may be acquired are sufficiently obvious. Money is the great engine by which such a purpose is usually effected, and there is no knowing what might not be done by a monied institution, with a large capital, wielded by a great, rich and ambitious state. The bank of Amsterdam did not contribute a little to the ascendancy of Holland over the states of the Dutch Union. A State Bank may produce the same effect among us, unless it be checked by the financial power of the nation. In what form, or under what modifications and restrictions a National Bank should be established to prevent its becoming dangerous to the creating power or to the country, it is not my business to consider. A wise and prudent legislation is all that is required for that purpose.

I have, in like manner, ventured to express my opinion on some minor points, and have abstained from the consideration of others. I have said nothing on the questions which have been lately stirred, and which happily appear now to be at rest. I have not inquired whether a state can secede from the Union, or of its own authority declare an act of congress null and void. I feared lest the shade of Washington should frown upon me.*

* See Washington's Farewell Address in the Appendix.

Neither have I said anything respecting the question so often agitated, whether the constitution should be construed strictly or liberally? All I have to say on this subject is that I think it should be construed *fairly* and *honestly*, always keeping in view the objects for which it was made.

On a general view of the instrument and a retrospection of the events that have taken place since it has been in operation, I have come to the conclusion, that there is no danger of our Union's degenerating into a consolidated government over this extensive country, and consequently of its destroying the existence of the states, as independent communities within the limits to them prescribed; there is much more danger, on the contrary, of a dissolution of that admirable Union, the pride of our land and the envy of all the world besides. The organization of the general government, and the powers which the states have reserved to themselves, are not only sufficient to secure the independent existence of the latter, but recent events have shown that they are even possessed of the means to make themselves formidable to those who might attempt to encroach upon their

constitutional rights. What has been done by a single state, when nothing more than a doubtful local interest was in question, shows what might be done by a combination of states, if more serious disturbances should take place.

I have shown in this essay, that the general government cannot be conveniently administered in all its details, without the aid of the state authorities. This I have called the *auxiliary system*, which is one of the foundations on which our Union rests. Take that foundation away, and the whole machine will be disorganized. An attempt on the part of congress to exercise all its powers by means of its own officers, spread like locusts in swarms through our land, would unavoidably fail. Its security depends on its being formidable abroad, strong and respected at home, but felt as little as possible by the individual citizens. The moment it shall attempt to grasp at more, a dissolution of the Union will be at hand. It is, no doubt, under this impression that congress have confided to the state courts the power of naturalization and other judicial powers, that they have avoided laying direct taxes, except in cases of great necessity, and in collecting them the state assessments have been generally adopted as a basis of computation. An excise law once produced an insurrection in Pennsylvania; the like has not been attempted ever since. These powers, undoubtedly, are vested in the national government; but not to be rashly or wantonly used. Upon the whole, a mutual dependence exists between the Union and the states, without which the former cannot be preserved. When differences have arisen between the general and the state governments, conciliation has been found the most effectual means of settling them. The constitution itself is the result of compromise, and is best preserved by the same means by which it has been obtained. May heaven avert for many ages, the fatal period when our differences shall have to be settled by brutal force! Between powers so nicely balanced, a collision is ever to be dreaded.

An intelligent foreigner, after perusing these sheets, made the following remark: "Your constitution was made for a *virtuous people*; but it will not suit any other." Let us, then, continue to be virtuous, and we may hope to be long united, happy and free.

With these few observations, I submit this little work to the impartial public. I have endeavoured to give a view of the constitution as I understand it, without regard to party opinions, and much less to party interests: these are transient; but truth and reason are eternal. I have written for the rising generation; I have spoken to them the language which I firmly believe they or their descendants will one day hear from posterity.

A
BRIEF VIEW
OF THE
Constitution of the United States.

CHAPTER I.

PRELIMINARY OBSERVATIONS.

SECTION 1. — *State of the Colonies before and during the Revolution*.

BEFORE the revolution the British colonies in America were independent of each other, but separately dependent on the king, and in some measure on the parliament of Great Britain. The extent of that dependence was not accurately defined; its general principles were, however, sufficiently understood, so that, at least ever since the final expulsion of the Stuarts from the throne of Great Britain, in 1688, the mother country and the colonies went on harmoniously together, without any but trifling differences, which did not interrupt their union. It was understood that in return for the protection which the former afforded to the latter, particularly against their neighbours, the French, who, until a few years before the revolution, were in possession of Canada, and also against the Indians in alliance with them, she had a right to monopolize their commerce, and with that view, to restrict it by laws and regulations. The crown also interfered in various ways in their internal government, which was, in general, modelled upon that of Great Britain, though the forms differed in several particulars, which did not, however, affect the substantial principles of the British constitution, to which they all clung with enthusiastic affection; and, of course, their governments, though differing in some details, were all founded on the representative combined with the monarchical principle. Trial by jury, in civil as well as in criminal cases, the writ of habeas corpus, and the liberty of the press, were among the privileges which they most cherished, and were incorporated in all their codes. Thus they enjoyed as much civil and political liberty as could come to the share of dependent states; and, above all, the precious right of not being obliged to part with their money, but by their free will and consent; without which, colour it as you will, every form of government, however free or republican in its outward appearance, is but slavery in disguise. Otherwise, the crown of England possessed great power and influence in their separate governments. In most of the colonies, the executive branch was dependent upon it; the governors being appointed by the king; and the judges as well as many other officers, held their offices mediately or immediately under him. The crown, moreover, had a negative on all the laws passed by the colonial legislature, which it exercised through its governors or through the council of state. So that, on the whole, the mother country possessed powers sufficient to enforce her colonial system, and keep her American possessions in check, while these were left at liberty to regulate their internal affairs in the manner best suited to their peculiar situation, and to promote among themselves all the arts, that did not interfere with the interests or policy of Great Britain.

In this situation the British colonies prospered beyond any other of the European settlements in America. They were happy and contented. They were proud of being constituent parts of a great empire; they gloried in the name of English subjects, and never would have thought (at least for a long time) of changing their condition, if the parliament of Great Britain, in an evil hour, had not formed and avowed the project of reducing them to an absolute subjection to their power.

We have said above that no freedom can exist, where the people can be compelled to part with their money, without their consent, or that of their representatives. The people of the colonies were not represented in the British parliament; therefore, it was evident that that body had no right to impose upon them taxes of any kind, unless they were absolutely

necessary for the regulation of their commerce. The practice had been, when the mother country wanted funds for some objects in which the colonies were interested, to apply for aid to their respective legislatures, which they, in general, freely granted. But scarcely had Great Britain, with the assistance of those colonies, made the conquest of Canada, and compelled France and Spain to submit to humiliating treaties, that there were no bounds to her ambition; and she began to look on her colonies as sources from whence she might draw money at her pleasure. Intoxicated with success, she not only claimed the right of taxing them without any limitation; but, as if that were not sufficient, she also claimed that of binding them by her statutes *in all cases whatsoever*. This was slavery without disguise. Yet the colonies might have suffered the parent state to enjoy her theories, if she had not attempted to carry them into practice, and to enforce their execution by her arms. The means that the took for that purpose, and the resistance that was made, are within the province of history. Suffice if to say, that in consequence of these, serious differences arose, and a civil war, at last, was kindled between the colonies and the mother country, which resulted in the separation of thirteen of those colonies, and their declaring themselves free and independent states.

This declaration, as every one knows, took place on the memorable 4th of July, 1776. At that moment, and by virtue of that solemn act, each of these colonies became a free, sovereign, and independent state; each became free to act as it should think proper; sovereign within its limits, and independent of the whole world besides.

A union, however, subsisted between them at the time of this declaration. A congress had been assembled at Philadelphia, towards the end of the year 1774, consisting of delegates from the different colonies, who had no powers given, to them, but to consult and advise on the best means of obtaining the redress of their grievances from Great Britain, and restoring harmony with the mother country. When this plan was adopted, hopes of a reconciliation were still entertained. Consequently the first congress confined themselves to sending humble petitions to the British king and parliament, and spirited addresses to their fellow-subjects in the various parts of the empire. To these and some recommendations to the people of the colonies, which were punctually obeyed, the proceedings of this congress were confined; and after a short session, they separated.

A second congress was convened to meet at the same place on the 10th of May, 1775, invested with no greater powers than the former. When this new assembly met, the face of affairs had considerably changed.

Hostilities had begun between the mother country and the colonies. The battle of Lexington had been fought on the 19th of April preceding, and every thing announced an impending war between the two countries. Great Britain declared her intention to compel the colonies to submit by force of arms, and that determination soon brought on actual war. Congress, supported by the confidence of the people, but without any express powers, undertook to direct the storm, and were seconded by the people and by the colonial authorities. They issued paper money, raised troops by requisitions, appointed officers, settled their pay and emoluments, directed military operations, and in little more than a year after their meeting, they proclaimed independence, without making any other

change in the state of things. It was not until the 15th of November 1777, that they presented to the new states for their acceptance articles of confederation and perpetual union, which were not adopted by all until the year 1781, when Maryland was the last that ratified them.

In the mean time congress went on as if they had been invested with the most explicit powers; they went even so far as to bind the nation by treaties with France, by one of which they guaranteed all the possessions of that kingdom in the West Indies. It was not, as far as we know, even thought necessary that those treaties should be ratified by the state legislatures. No one, at that time, denied the *constitutionality* of those powers, which congress exercised for the defence of the country, and the general welfare, though they had no other authority to show for them than the tacit consent of the people; and it is remarkable that in none of the constitutions that were made in the years 1776 and 1777, after the Declaration of Independence, and before the articles of confederation were submitted to the states, among which constitutions may be mentioned those of New York, Pennsylvania, Maryland, and North Carolina, nothing was said of the treaty-making power, or of that of declaring war and making peace, so well was it understood that those powers did not belong to the individual states, but to the *United States*, under whatever form their general government might thereafter be constituted. *The union* was deeply rooted, and had its most solid foundations in the hearts of the people, who gloried in being not a cluster of independent communities, but a great, respectable, and powerful *nation*.

This undefined state of things ceased on the 12th of February, 1781, which by the accession of Maryland, the articles of confederation and perpetual union became the national law of the whole thirteen states. They were very inadequate to what the critical situation of the country required; but the people's minds were not yet prepared for a more comprehensive and more efficient form of government.

SECT. 2 — *Of the Articles of Confederation and Perpetual Union*.

This celebrated compact began with a declaration that each state retained its sovereignty, freedom and independence, and every power, jurisdiction and right, which the confederation did not expressly delegate to the United States in congress assembled. It proceeded to define the confederation itself to be a league of friendship between the states for their common defence, the security of their liberties, and their mutual and general welfare; and lastly the states bound themselves, in their sovereign and independent capacities, to assist each other against all external force. To promote good neighbourhood between the confederates, the free inhabitants of each state, (paupers and vagabonds only excepted,) were to be entitled to the privileges of citizens in all the others; fugitives from justice were to be mutually delivered up, and full faith and credit were to be given in each of the states, to the records, acts, and judicial proceedings of the others. It is not a little remarkable that no provision was made for the delivering up of fugitive slaves, which seems to have been left entirely to the good faith of the states.

The formation of the congress was established on the principle of the sovereignty and independence of the states. Its members were in fact no more than ambassadors, under the name of *delegates*, (*legati*,) from the states which sent them. Each state was to send a number of such delegates, not less than two, nor more than seven; to maintain them at its own expense, and to recall them at pleasure, even within the year for which they were appointed.

To this congress was given a splendid array of powers, which in appearance placed them on a line with the most potent sovereigns of the earth; but it was in appearance only, for the substance was denied them, the states having reserved to themselves all the means of carrying those powers into execution. Thus congress might declare and carry on war, make treaties of peace, alliance and commerce, decree the raising of land forces and the quotas of each state, build and fit out ships of war, borrow money and issue bills of credit on the faith of the nation; but none of those powers could be exercised without the co-operation of the individual states if an army was to be raised, all that congress could do, was to make requisitions to the states for their respective quotas of men in arms: and it was the same when money was wanted, as congress had no power to raise it directly or indirectly in the shape of taxes. The states, it is true, were expressly bound by the articles of confederation to furnish those quotas when required; the mode of assessment was also fixed by that instrument; it was in proportion to the value of all land within each state granted to or surveyed for any person, with the buildings and improvements thereon, as the same should be estimated in such manner as congress might from time to time prescribe. But congress had no power to compel the states to fulfil those engagements; the moral bond was all they had to rely upon, and every one knows how weak is that tie upon states as well as upon individuals, if not strengthened by a power, which they cannot resist, and which they are forced to obey. To increase the difficulty, congress could not exercise the powers which we have enumerated without the concurrence of the delegates of more than two-thirds of the states, that is to say, of nine out of thirteen. The votes were taken by states, represented by their delegates. If the members of a delegation were equally divided in opinion on a particular point, it followed that the state that they represented, was so far deprived of a voice, which still increased the difficulty of obtaining the required majority.

The states, it is true, were prohibited from separately exercising the powers which they had conferred on the congress; they could not, without the consent of that body, send or receive embassies, or make treaties with foreign governments; neither could they, without such consent, engage in war, unless in case of actual invasion, or of imminent danger of being attacked by the Indians. They could not grant commissions to ships of war, or issue letters of rnarque or reprisal, except after a declaration of war by congress, or in case of their being infested by pirates, and then only until congress should determine otherwise; nor could they keep on foot any body of forces in time of peace, except such as congress should think necessary for garrisoning their forts; and in order to prevent their confederating with each other, to the detriment of the union, no two or more states were to enter into any treaty, confederation or alliance whatever with each other, without the consent of the United States in congress assembled. But those prohibitions, while they paralyzed the action of the states, added no strength to that of the union, which still was

dependent on the precarious compliance of each individual state with the requisitions of the federal head.

As congress had no power to levy taxes or imposts of any kind, the regulation of commerce remained entirely with the individual states. Each state might act in that respect as it thought proper; and therefore the nation, as such, could not countervail the fiscal regulations of foreign powers, however much they might tend to the detriment of the agriculture, commerce or manufactures of the country; while, on the other hand, it was lawful for the states to carry on a war of commercial regulations against each other, which would inevitably have resulted in a dissolution of the union, and perhaps at last in bloody hostilities between its members.

Such were the most prominent features of that confederation, which, as it were by a miracle, carried the United States through the "war of independence." A few years of peace made its imperfections manifest to all; and in the year 1787, a convention of delegates from all the states met at Philadelphia, in order to remedy its defects. The result of their labours was the present *constitution of the United States*.

CHAPTER II.

GENERAL VIEW OF THE CONSTITUTION.

THE title of this instrument at once points out the difference between it and the *confederation* that existed before. It bears on its face the stamp of a national government; and it was, no doubt, the view of the framers to give that character to the new compact that was about to be entered into, without, however, infringing on the sovereignty of the states more than was absolutely necessary to attain the objects declared in the instrument, and those were expressed to be "to form a more perfect union; to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure for ever the blessings of liberty."

This was a most difficult task to be accomplished. A confederation, in the strict sense of the word, had been attempted and had failed; a consolidation of the states under one general government, of which they should be mere subordinate districts or provinces, was not even thought of, it being well understood that such a government could not exist over such a widely extended country under republican forms, and that it would inevitably lead to a monarchy, and perhaps to despotism. A form of government therefore was resolved upon, which should be compounded of both, in such a manner as not to deprive the states of more of their sovereignty and independence, than was necessary to insure the permanency of the union and the welfare and safety of the whole.

To designate this new form of government, the word *constitution* was substituted to that of *confederation*, while on the other hand the denomination of *United States* was retained, the former being expressive of a *national*, the latter of a *federal* system. The purely federal clauses by which, in the articles of confederation, the states are said to retain their "sovereignly, freedom and independence," "to be bound to each other in a

firm league of friendship, and to bind themselves to assist each other against foreign aggression," were left out of the new compact, as inconsistent with its spirit, and what remained of sovereignty in the states after the concessions made to the government of the union, was left, as a matter of inference, to be gathered from the context of the whole instrument, in which the word "sovereignty" is not once used, as applied to the states. And in order to stamp the national character upon it from the very outset, the preamble begins with these remarkable words. "We, the *people* of the United States ..... do ordain and establish this *constitution* for the United States of America." Thus excluding the idea of a mere confederation of independent communities, by making the people at large a party to this compact, and binding not only each state, but every individual to each other, and to the government of their creation. In these terms the constitution was afterwards ratified by the people of the states, assembled in conventions for that purpose. After its adoption, however, it received some amendments, made in one of the forms which the constitution prescribes. By one of those amendments, it is provided, that "the enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others, retained by the people;" and by another, that "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." This last clause was borrowed from the articles of confederation; but is less strongly expressed.

That there are strong federal features in this instrument is not to be denied; but upon the whole, the national character is predominant, as will be seen from the distribution of the powers mutually conceded and reserved.

Among the powers with which the rulers of mankind are or may be invested, are those which writers on public law have denominated, by way of preeminence, *jura summi imperii*, that is to say, the rights of sove- reignty in the highest degree." Such are principally the rights or powers to make war and conclude peace, to enter into treaties of alliance and commerce, to send and receive ambassadors, to coin money, fix the standard of weights and measures, raise and equip fleets and armies, borrow money on the credit of the nation, and others of a similar nature.

Most of these powers were conferred, by the articles of confederation, on the congress of the United States; but it was in the power of any one of the states to withhold its share of the means for carrying them into execution. The congress therefore possessed the pageantry, the mere name of sovereignty, not sovereignty itself. It was the agent of thirteen sovereigns that might at any time defeat its measures, by refusing or neglecting to comply with its requisitions.

The framers of the present constitution found, of course, no difficulty in conferring on the new government the same powers that had been given, by the articles of confederation, to the congress of the United States, and they freely granted them in the same exclusive manner; but it was necessary, at the same time, to grant the means to execute them independently of the governments of the states; and that could not be done without putting into the hands of the national authorities the two great engines of national sovereignty, the *purse* and the *sword*. The convention magnanimously agreed to this

surrender. The congress was empowered to lay taxes, and to raise and maintain fleets and armies, with their own means, under trifling restrictions, which will be mentioned in their proper places.

It was not enough to give to the general government the use and the direction of the *military* sword, it was necessary also to place in their hands the sword *of justice*, at least as far as was necessary to enable them by its means, to give effect to the laws that they are authorized to make, and this was done in the manner that we shall presently show.

Thus far we have seen how the framers of our constitution, at the same time that they continued in the general government the *jura summi imperii*, which had been vested in the old congress, furnished it with ample means to carry those powers into execution. But this valuable instrument contains many important details, which may, in a great measure, be considered as corollaries of the great principle on which the convention acted, and of which we have shown the most prominent features.

It cannot have escaped the observation of the reader, that the powers now vested in the general government, could not be confided to a single body, such as was the former congress; here was no longer a confederation, but a national government, acting, within certain limits, independently of the states, upon all and every one of the individuals of which they were composed, and armed with compulsory means to enforce obedience to its decrees; it was therefore indispensably necessary to divide those ample powers, so as to guard in the best possible manner against their abuse. Therefore the new government was established on the model of those of the states, with legislative, executive, and judicial departments, distinct and separate from each other. We shall now give a succinct view of its organization, and of the distribution of the powers granted among the several branches of the national government, showing at the same time, what powers are reserved to the states in their separate; capacity, and upon the whole in what manner the state and the national authorities are balanced and made to harmonize with each other.

CHAPTER III.

ORGANIZATION OF THE GOVERNMENT.

SECTION 1. — *Of the Legislative Department*.

THE legislature is composed of two branches, a senate and a house of representatives.

The senate represents the states in their federative capacities. Its members are elected for six years by the state legislatures; one-third of them go out every second year. Each state has two senators. When assembled, however, they vote individually and not by states; so that a state that has but one senator present, has in fact but half a vote.

The representatives are elected in each state by the people at large. Their numbers are in proportion to the population of the state which sends them; in states where there are slaves, three-fifths of them are included in the computation of their population; Indians,

not taxed, are excluded every where. The number of representatives is not to exceed one for every thirty thousand; but each state is at least to have one. The representatives are elected for two years. Every ten years a census, or enumeration of the inhabitants, is to be made; upon which congress determine by a law the number of representatives that each state is to send. The first of these enumerations was made in 1700, the last in 1830.

The times, places, and manner of holding elections for senators and representatives are prescribed by the legislature of each state; but congress may by law make or alter such regulations, except as to places for choosing senators. This, however, they have not yet done, but left it to the states, who elect senators by joint or separate ballots of the two houses of their legislatures, and representatives by popular election. The electors of the latter must be qualified to elect members of the most numerous branch of the legislature of their state.

The requisite qualifications for a senator are, to be 30 years of age, to have been nine years a citizen of the United States; to be a representative requires only 25 years of age, and seven years citizenship. Both senators and representatives must, at the time of their election, be inhabitants of the state for which they are chosen. The time of their previous residence is fixed by the constitutions or laws of the states themselves.

The vice-president of the United States presides over the senate, but has no vote in it, unless they be equally divided. The house of representatives elects its own speaker. The congress meet every second year, on the first Monday of December; in the interval, they may adjourn to such time as they please, so that they meet at least once in each year. But neither house can adjourn for more than three days without the consent of the other; if they disagree, the president fixes the time of adjournment. This, however, has never yet happened. The congress expires on the third of March in every second year. The president may call a special meeting of congress when he thinks it necessary.

The president does not initiate laws; they are presented, in the form of bills, sometimes by individual members, with permission of the house in which they originate; but most generally by committees to whom the subject has been referred. There are standing committees for each of the principal subjects of legislation, as *finance, foreign affairs, the judiciary*, &c. and special committees, appointed for particular subjects. A committee of the whole house is only a preparatory mode of discussion, in which a greater latitude of debate is allowed, under the presidency of a member chosen for that purpose: after the discussion has been gone through, the speaker of the house of representatives, or the president of the senate, resumes the chair, the chairman of the committee makes his report, on which the subject is debated again in a more formal manner, and the bill or report is either adopted, amended or rejected.

But though the president does not originate laws, he is required by the constitution to give to congress from time to time, information of the state of the union, and to recommend to their consideration such measures as he may judge necessary and expedient. Thus, in 1812, he recommended to them the expediency of declaring war against Great Britain, which was followed by a declaration in the form of a law, to that effect.

Each house of congress is the judge of the elections, returns and qualifications of its own members; it may compel their attendance, punish them for disorderly behaviour, and with the concurrence of two-thirds, expel a member.

No person holding an office under the United States can be a member of either house during his continuance in office; nor can a senator, or representative, during the time for which he was elected, be appointed to any civil oflicc under the United States, created, or the emoluments of which have been increased, during that time. State officers may be elected to congress, when not disabled by the constitution or laws of their own states. In general, state and federal offices are held to be incompatible.

The members of both houses are privileged from arrest, (except for treason, felony, or breach of the peace,) during their attendance at the sessions of their respective houses, and in going and returning from the same. They are not to be questioned, out of congress, for their speeches and debates therein.

SECT. 2 — *Of the Executive Department*.

The executive power is vested in a single magistrate, called the President of the United States. The constitution does not assign to him any council; but he frequently consults the heads of departments, who are officers recognised by the constitution, whom he appoints with the consent of the senate, and whom he may remove at pleasure. The legislature fixes their number and their functions. They are at present four: the secretary of state, whose official duties embrace the foreign and the home department, and those of the treasury, of war, and of the navy. These, with the attorney-general, and of late the postmaster-general, form what is called a cabinet council; which the constitution, however, does not recognise, though it does not forbid. The president is responsible for his acts, and may be impeached for treason, bribery, or other high crimes and misdemeanors.

The president has a qualified negative on the acts of the legislature, and therefore may be considered as a branch of it, though the constitution does not say so in terms; but on the contrary, declares in the first section of its first article, that "*all* legislative powers therein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives." But by the seventh section of the same article the president's approbation and signature are required to give effect to any bill, resolution or vote passed by the two houses; and if he objects, the bill, resolution or vote does not take effect, or become a law, unless reconsidered and passed by two-thirds of the senate and of the house of representatives.

There is also a vice-president, who is president of the senate by virtue of his office, and is to exercise the duties of president in case of a vacancy of that office by the death, removal, resignation, or inability of the chief magistrate.

The president and vice-president hold their offices during a term of four years; but may be re-elected as often as the people choose. There is, however, no example of a president

or vice-president having served more than two terms; the first president, Washington, having declined a third election, his example has been followed by his successors; and it is now become a popular maxim that a president or vice-president can only be elected for two successive terms.

The election of president and vice-president is made by ballot, by electors in each state, at the same time, but by different tickets, designating the votes for the respective offices.

The electors are appointed or chosen in each state in such manner as the state legislature directs. In some states the legislatures appoint them themselves by joint or concurrent votes of the two houses; in others, they are elected by the people. Their number is to be equal to the aggregate number of the senators and representatives of each state in the congress of the United States. No member of congress, whether senator or representative, nor any person holding an office of trust or profit under the United States, can be an elector.

The electors, thus chosen, meet in their respective states, and vote by ballot for a president and vice-president, as above mentioned, one of whom, at least, is not to be an inhabitant of the state in which he is chosen. They then transmit their votes, sealed, to the president of the senate, who, on a day appointed by law, (the second Wednesday in February succeeding the meeting of the electors,) opens all the certificates in the presence of both houses of congress, and declares the persons who have the majority of votes, and who are of course elected. If, however, no one should have a majority of votes, the house of representatives shall immediately, if for a president, and the senate if for a vice-president, proceed to choose the former out of the three, and the latter out of the two highest in votes; in which choice the representatives shall vote by states, and the senators individually. If the house do not choose a president before the fourth of March next following, the vice-president shall act as president, as in other cases of vacancy of the president's office.

The congress determines the time of choosing the electors, and the day on which they are to give their votes, which is to be the same throughout the United States. By the existing law, the electors are to meet and vote on the first Wednesday in December, in every fourth year succeeding the last election, and are to be chosen or appointed within thirty-four days preceding the day of their meeting.

On failure of the president by death or otherwise, his duties devolve on the vice-president; and congress may declare by law who shall perform those duties, in case of the failure of both, during the vacancy. The congress have declared by a law that it should be the president pro tempore of the senate; and if there should be none, then the speaker of the house of representatives.

No person, except a natural born citizen, or one who was a citizen of the United States at the time of the adoption of the Constitution, can be elected to the office of president, nor can one be so elected who shall not have attained the age of thirty-five years, and been

fourteen years a resident within the United States; and no person constitutionally ineligible to the office of president, can be elected to that of vice-president.

The president is a responsible officer. He is sworn faithfully to execute his office, and to the best of his ability to preserve, protect and defend the constitution, He, as well as the vice-president and all civil officers of the United States, shall be removed on impeachment for and conviction of, treason, bribery, or other high misdemeanors.

SECT. 3. — *Of the Judiciary Department*.

The judiciary power of the United States is vested in a supreme court and such inferior courts as congress from time to time may establish. The judges are appointed by the president, with the advice and consent of the senate. They hold their offices during good behaviour.

The supreme court at present consists of one chief justice and six associate judges, and holds its sittings once a year at the scat of government. There is in each state one, and in some two, district courts, consisting of a single judge, who holds regular sittings four times in the year, and special sessions, whenever occasion requires. Above those tribunals and inferior to the supreme court, there is a circuit court composed of one of the judges of the supreme court, who repairs twice a year to the districts allotted to him, and there sits with the district judge, who, with him, constitutes the circuit court. The states or districts are for that purpose divided into circuits, one of which is allotted to each judge of the supreme court, including the chief justice. A few of the states are without a circuit court, and the district judge performs its functions. Measures are in contemplation to remedy this defect.

During the presidency of the first Adams, a law was passed, in virtue of which three judges were appointed in and for each circuit, who, together, without the district judge, composed the circuit court. On a change of administration, that excellent system was abolished.

Courts martial and the senate, sitting as a court for the trial of impeachments, are not considered as within the ordinary judicial order. They are exceptions to the general system.

SECTION 4. — *Appointment of Officers and Salaries*.

The president nominates, and, with the advice and consent of the senate, appoints ambassadors, other public ministers and consuls, judges of the supreme court and all other officers of the United States, whose appointment are not otherwise provided for by the constitution, and all which shall be established by law; but the congress may also 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 may also fill up all vacancies happening during the recess of the senate, by granting commissions, which shall expire at the end of their next session. If they should so expire in consequence of the president's neglecting to send nominations to the senate in a reasonable time, or of their disagreement, the constitution does not seem to have provided for filling the vacancies.

In statutes creating new offices, congress have inserted, in several instances, a clause authorizing the president in case the appointments should not be made during their session, to make such appointments in the recess of the senate, by granting commissions which should expire at the end of their next session; otherwise the vacancies not happening during the recess, the appointments could not have been made before congress met again.

The president, vice-president, senators, representatives and judges have their salaries fixed by law. Those of the judges cannot be diminished during their continuance in office. That of the president can neither be increased nor diminished; and he shall not receive any other emolument from the United States or any of them. The nation, however, has provided a house for his residence, and furnishes it from time to time. The house and furniture are national property.

Such is the organization of the general government of the United States. We shall now enumerate the powers that are vested in them, and show in what manner those powers are distributed, first laying down, as a general rule, that all the legislative powers granted by the constitution are vested in the congress, subject to the qualified negative of the president, as above-mentioned, which must always be understood when we speak of the powers vested in congress. That negative power, or *veto*, as it is called, is not intended to be frequently used. It is but seldom that a president can have just cause to differ in opinion from the representatives of the people and those of the states.

CHAPTER IV.

OF THE POWERS, RIGHTS AND DUTIES OF THE GENERAL AND STATE GOVERNMENTS.

SECTION 1. — *Foreign Relations, War, Peace, Treaties*.

CONGRESS have the power of declaring war, and of doing all that may be necessary to carry that declaration into effect, which the constitution thus enumerates: to grant letters of marque and reprisal; to raise and support armies and provide and maintain a navy; to make rules for the government and regulation of the land and naval forces, and concerning captures by land and water; to provide for calling forth the militia, when necessary to execute the laws of the Union, suppress insurrections and repel invasions, and for organizing, arming and disciplining the same, and governing such parts thereof as may be employed in the service of the United States, reserving to the states the appointment of the officers and the authority of training the militia, according to the discipline prescribed by congress; to erect forts, magazines, arsenals, dock-yards and

other needful buildings, on sites to be by them purchased, with the consent of the legislatures of the states in which they may be situated.

But, although congress have the power of declaring, and, as we have seen, of *making* war, that of making peace is not confided to them. The president is the organ of the nation with foreign governments; to him belongs the power of negotiating all treaties, whether of peace, alliance, commerce, neutrality, or of whatever other description. Therefore, the putting an end to a war depends, in the first instance, on his discretion; but no treaty can be valid, unless it receives the concurrent approbation of the senate, by a majority of two-thirds of the members present; and if an appropriation of money, or some act of legislation is necessary to give it effect, then congress must pass a law for such purposes; in every other respect, treaties signed by the president and ratified by the senate, are, after being made known by a proclamation of the president, to be executed as the *supreme law* of the land. A cession of territory, however, would seem to require the consent of the state in which it is situated.

The president of the United States, as the chief executive magistrate of the Union, is, by virtue of his office, commander-in-chief of the army and navy, and also of the militia, when called into the national service: he, with the advice and consent of the senate, sends, and, without such consent, receives ambassadors, ministers of inferior grade, consuls and consular agents, and generally represents, in the view of foreign powers, the *majesty of the nation*. With him alone, or with his secretary of state, foreign sovereigns and their ministers are allowed to communicate in their public capacities, nor can they appeal from his decisions to any other authority in the land; but they may apply to the judiciary in matters in which that branch of government is competent to decide, complying with the forms which the law requires.

SECTION 2. — *Finance*.

The congress are authorized to borrow money on the credit of the United States; to lay and collect taxes, duties, imposts and excises, without any limitation but that they are to be equal throughout the United States, and that no duties are to be laid upon articles exported from any state. All direct taxes are to be in proportion to the population, as in the election of representatives. The objects, for which those powers of taxation are given, are declared to be "to pay the debts and provide for the *common defence* and *general welfare* of the United States, which includes every subject of general interest. It is *now* a settled doctrine that the money thus raised may be applied by congress to the making of roads, canals and other public improvements, provided they be of a *national*, not of a *local* character, and this doctrine has been acted upon in numerous instances. The protection of agriculture, commerce and manufactures against the legislative enactments or fiscal regulations of foreign nations, seems to be a legitimate object for the exercise of the powers of taxation vested in congress. What would become of our nation, if the government established for the *common defence*, could not *protect* the interests of the citizens against foreign powers, by its legislation as well as by force of arms?

The supreme power over the treasury belongs to the legislature, and therefore no money can be drawn from it but in consequence of appropriations made by law. The congress have moreover the power to coin money and regulate the value thereof, and of foreign coin. All bills for raising revenue must originate in the house of representatives; but the senate may propose or concur with amendments, as in other bills.

SECTION 3. — *Commerce*.

Congress have the power to regulate commerce with foreign nations, among the several states, and with the Indian tribes, and to fix the standard of weights and measures. This last power, however, they have not yet exercised. They are also empowered to make uniform laws on the subject of bankruptcy throughout the United States.

In execution of the power to regulate trade, and also of that to regulate the value of money, the congress have established a national bank, which has fully answered the object in view. The right of the national legislature to create such an institution has often been, and is still questioned by men whose opinions are entitled to respect; but experience has shown that the value of money cannot be effectually regulated by any other means, through so extensive a country as ours, while each state retains the power of granting to individuals and monied associations the privilege of *issuing bills of credit*, the value of which fluctuates and will fluctuate still more, unless there is some superior power in or under the authority of the national government to check their improvident issues.

On the 4th of April, 1800, an act was passed by congress for establishing a uniform system of bankruptcy throughout the United States. That act was limited to five years, but was not permitted to run through its course; it was repealed on the 19th of December, 1803, wanting little more than one year to expire by its own limitation. Since that time various efforts have been made to revive it, or to obtain an act on similar principles, but all without success; the measure has hitherto appeared to be unpopular with the majority of the people of the United States. The laws of the same description made by the legislatures of the individual states, have been adjudged by the supreme court of the United States to be unconstitutional, (except under restrictions and limitations that would make them beneficially impracticable,) principally on the ground that they *impair the obligation of contracts*, which, as will be seen hereafter, is prohibited to the states.

The want of laws adequate to the relief of bankrupts and their creditors is severely felt throughout the United States, and there is but little hope of a uniform system being adopted. As congress are not required by the constitution to make a *complete* system, but merely *uniform laws* on the *subject* of bankruptcy, it might be sufficient, perhaps, if they were to enact some general rules and principles, leaving the details to the wisdom of the state legislatures, to be suited by them to their peculiar circumstances.

SECTION 4. — *General and Penal Legislation*.

The congress, besides the special powers to them granted, are authorized to make all laws that may be necessary and proper for carrying into execution the powers vested in them or in the government of the United States or in any department or office thereof.

This includes penal legislation for the purpose of enforcing obedience to their statutes. Independent of this general power, the constitution gives them a special authority in particular cases, as 1. To provide for the punishment of counterfeiting the securities and current coin of the United States; 2. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations. The crime of treason is defined by the constitution itself, and is to consist only "in levying war against the United States, or adhering to their enemies, giving them aid and comfort."

Congress have the power to declare the punishment of treason; but no attainder shall work corruption of blood or forfeiture, except during the life of the person attainted on attainder of treason. *Attainder* here must mean *conviction*; as by a preceding section congress are prohibited from passing bills of attainder. No one can be convicted of treason, but on the testimony of two witnesses to the same overt act, or on confession in open court. The trial of all crimes, (except in cases of impeachment and military offences triable by courts martial) is to be by jury, in the state where the crime has been committed; when out of a state, congress may fix the place of trial.

The pardoning power is vested in the president, except in cases of impeachment; these are tried by the senate. The house of representatives impeaches, and the senate tries. No conviction can take place, unless two-thirds of the members concur. The judgment does not extend further than removal and disqualification from office; but the party may be further prosecuted at law for the same offence.

The constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States are the *supreme law of the land*, anything in the constitution or laws of any state to the contrary notwithstanding.

The president takes care that the laws be faithfully executed.

SECTION 5. — *Judicial Power*.

The judicial power of the general government, extends to all cases in law and equity arising under the constitution and laws of the United States, and under treaties made by their authority; to 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 article, however, has been modified by an amendment to the constitution, which declares that 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 foreigners. It has been held that this restriction does not extend to cases of admiralty and maritime jurisdiction.

Except in cases affecting ambassadors, other public ministers and consuls, and those to which a state shall be a party, the supreme court has only appellate jurisdiction, with such exceptions and under such regulations as congress may make. The original jurisdiction is vested by law partly in the circuit and partly in the district courts; the former having an appellate jurisdiction over the district courts in matters within the cognizance of the latter. The manner in which the powers are distributed between these tribunals is too complicated to be explained here. Some of these powers are exercised concurrently with, and others exclusively from the courts of the individual states.

In various instances congress have availed themselves of the aid of the state courts and magistrates to carry their laws or some parts of them into execution. This *auxiliary system* is calculated not only to promote harmony between the general and the state governments, but also to prevent the consolidation of the Union; for were the state authorities to refuse their assistance, congress would be compelled to fill the land with their inferior officers and magistrates, which could not be long tolerated by the people; and a dissolution of the Union might be the fatal consequence.

SECTION 6. — *New States*.

New states may be admitted by congress into the Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor by the junction of two or more states or parts of states, without the consent of the legislatures of those states as well as of congress.

Under this power, congress has purchased Louisiana from France, and Florida from Spain, and erected new states out of the former territory. Under the same power the state of Maine has been erected, with the consent of the legislature of Massachusetts, to which it formerly belonged. Vermont and Kentucky have in like manner been erected into states with the consent of those that had or claimed jurisdiction over them.

SECTION 7. — *Local Jurisdiction of Congress*.

The congress is empowered to exercise exclusive legislation in all cases whatsoever, over the district, not more than ten miles square, where the seat of government may be established, in virtue of a cession of territory by particular states. This jurisdiction is now exercised over the District of Columbia, which was formerly part of the states of Virginia and Maryland, but has been ceded by those states to the United States. The congress exercises the same jurisdiction over all places purchased from the states for the erection of forts, magazines, dock-yards and other public buildings.

The congress also may make all necessary rules and regulations respecting the territory or other property belonging to the United States. What is called the territory of the United

States, consists of, 1st. the District of Columbia, abovementioned; 2. The forts, arsenals, dock-yards, &c. also abovementioned; 3. Those lands which have been ceded to the United States by Great Britain, by the treaty of peace; by the states, after the conclusion of the said treaty; and by France and Spain under the treaties of cession of Louisiana and Florida, and which not having yet been erected into states, are governed under the authority of the United States, until they shall be admitted into the Union. There are now three territories, each of which is entitled to a delegate in congress, who may join in debates, but not vote. They are Michigan, Arkansas and Florida. The remainder of the lands of the United States to the west and north-west, and beyond the Rocky Mountains are yet wild and uncultivated. A few military posts and some scattered habitations only exist there.

SECTION 8. — *Miscellaneous Powers of Congress*.

Independent of the powers mentioned in the foregoing articles, congress have some special ones, which cannot be classed under a general head; such as that of establishing post-offices and post-roads, granting exclusive privileges to authors and inventors for their writings and discoveries and prohibiting the importation of slaves, which last power they have only exercised since the year 1808, the constitution having prohibited them from doing it before that time. The power to make a uniform bankrupt law might have been classed among these; but we have thought that it came more properly under the head of "Commerce." Congress are also empowered to establish a uniform rule for the naturalization of foreigners. This power has been considered as vested in the general government exclusively of the states, which the required *uniformity* appears necessarily to imply. By the existing law, five years residence in the United States are required, before an alien can be naturalized, and he must have declared, two years before, his intention to become a citizen. He must also be proved to be a person of good moral character, and take an oath to support the constitution of the United States, coupled with an express renunciation of his former allegiance. Naturalization may be obtained in the state courts, as well as in those of federal jurisdiction; but it can only be done in execution of a Jaw of congress. There are states where aliens cannot hold real property, which often makes it necessary for them to be naturalized, as by that means they become entitled to all the privileges and rights of natural born citizens, except that they cannot be elected to the offices of president and vice-president. This relic of the feudal system, however, has been abolished in some states, and mitigated in others, and will probably soon entirely disappear from our codes.

SECTION 9. — *Protection of the States and Guarantee of Republican Government*.

The United States guarantee to every state in the Union, *a republican form of government*. By this expression wo would understand a government "securing civil liberty and equal rights, and founded on the *representative*, to the exclusion of the *hereditary* principle." This, at least, is what we conceive to have been the meaning of the framers of our constitution, with respect to this country, to which alone the words are to be applied. We do not think that the states have a right to require more from each other. The principle of representation necessarily involves those of the sovereignty of the

people, and the responsibility of public officers. Every thing else is matter of detail, which may well be left to the wisdom of the states.

The United States are further bound to protect each of the states against invasion, and if required by the legislature of any of them, or by the executive (when the legislature cannot be convened,) against domestic violence.

SECTION 10. — *Restrictions on State and Federal Power*.

No state can enter into any treaty, alliance or confederation; this prohibition is general and unconditional, and a subsequent clause prohibits the states from making, without the consent of congress, any agreement or compact with each other; nor can they, without such consent, engage in war or keep troops or ships of war in time of peace, unless in case of invasion or imminent danger, which admits of no delay. They cannot grant letters of marque and reprisal, coin money, emit bills of credit, make any thing but gold and silver a tender in payment of debts, nor pass any law, impairing the obligation of contracts. These last mentioned prohibitions are absolute and unconditional.

The states cannot, without the consent of congress, lay any duty on tonnage, nor on imports or exports, unless that may be absolutely necessary for executing their inspection laws, which are laws for ascertaining the merchantable quality of produce, previous to exportation, and which the states are authorized to make. The net proceeds of all imposts and duties laid by any state on imports or exports are to be for the use of the treasury of the United States; and all such laws are to be subject to the revision and control of congress.

No such imposts or duties have been yet laid by any of the states; it has not been found necessary for the execution of their inspection laws.

Neither the United States nor the states individually can pass bills of attainder, or ex post facto laws, nor can they grant titles of nobility. No person holding any office of profit or trust under the United States, can, without the consent of congress, accept any present, emolument, office or title of any kind whatever from any king, prince or foreign state.

Congress can 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.

Besides the above restrictions, there are numerous articles, as well in the constitution as in the amendments to it, in the nature of a bill of rights, and the object of which is to secure the liberty of the citizen, particularly as respects the benefit of the writ of habeas corpus, of trial by jury in civil and criminal cases; the inviolability of domicile, and security from illegal searches and from the obligation of quartering soldiers in time of peace, and other like provisions, by which civil liberty is fully guaranteed.

The enumeration in the constitution of certain rights, is not to be constructed to deny or disparage others retained by the people; and the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people. This article differs from a similar one in the confederation in this, that the word *expressly* is here left out, which leaves room for implied powers, without the admission of which the constitution could not be carried into effect.

SECTION 11. — *Public Law between the States*.

This is what Tacitus calls *humanitatis commercia*, and what has been still more elegantly called *fœdera generis humani*. Our constitution says but little on this important subject. What it says, however, is susceptible of much developement, and, it is hoped, will receive it. These are the principal features of what it declares:

The citizens of each state are entitled to all the privileges and immunities of citizens in the several states. Fugitives from justice and from personal service or labour, are to be delivered up on being demanded in the manner prescribed by the constitution and the laws made in pursuance thereof.

Full faith and credit are to be given in each state to the public acts, records and judicial proceedings of every other state; and congress may prescribe by law the manner in which such records and proceedings shall be proved, and the effect thereof. Congress have passed a few laws to carry this last clause into execution; but have not yet, by any means, done all that could be done to attain the object that it has in view — the convenience of the citizens.

SECTION 12. — *Mode of amending the Constitution*.

It is the duty of congress to propose amendments to the constitution, whenever two-thirds of both houses deem it necessary; and on the application of the legislatures of the several states, they are bound to call a convention for proposing amendments. In either case, when the amendments proposed are 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 may be proposed by congress, they become parts of the constitution. No state, however, without its consent, can be deprived of its equal suffrage in the senate.

Fourteen amendments have already been made to the constitution on the proposition of congress in pursuance of these powers, which in the above sketch have been considered as a part of the original instrument, and, therefore, are not otherwise separately noticed. They now form a part of the constitution quite as much as if they had been originally inserted in it.

CHAPTER V.

CONCLUDING REMARKS.

THUS we have presented to our readers a brief view of the constitution of the United States, which, on cool and mature reflection, we cannot help considering as the most perfect system of government that has ever existed among mankind. It has, as far as it has gone, solved the problem of the possibility of the existence of a republic in a widely extended country, and the means, never thought of before, has been found to effect that which was considered as next to impossible, the combination of the federal and national systems of government, so nicely and so skilfully balanced, that one does not seem to preponderate over the other. It was a bold thought of the framers of this instrument to vest the dreaded powers of the *purse* and the *sword* in the hands of the national congress, which far from producing the mischiefs that were anticipated by some, has given strength and power to the United States, and left the states of which the Union is composed, possessed of as much freedom, sovereignty and independence as is necessary for their happiness and welfare, and the preservation of their liberties.

If we consider the constitution in respect to its organization, we shall find the most perfect balance between the two apparently opposite principles of national and state sovereignty. The senate, from its equality of votes and the mode of election of its members, in the natural guardian of the sovereignty of the states, while the popular branch of the national legislature, naturally hostile to the encroachments of power, will watch over the rights and liberties of the people. Doth are the offspring of the states, to which at short intervals they must return.

Nor is the distribution of powers between the federal and the state governments less worthy of admiration. At first view, it might appear, as if these powers were most unequally distributed. The supreme rights of empire, *jura summi imperii*, as they are called, with the purse and the sword, as the means for carrying them into execution, have a formidable aspect; and it would seem as if the national government could easily swallow up the sovereignty of the states. Hut the danger, if any there be, seems rather to be on the other side. The independent organization of the state governments with their legislatures, governors, militia, judiciary and ministerial officers, with uncontrolled jurisdiction within their constitutional limits; the very name of that sovereignty and independence, which they possess in a great degree, and of which they are excessively jealous; the means they have in their power of collecting and combining their force without the appearance of illegality; all these things form a strong counterpoise to the authority of the general government, which with all its ample powers, operates but little on the individual citizens, whereas the state officers are constantly in contact with them, and have greater means of securing their attachment. The national government, as \vc have before observed, is frequently obliged to require the aid of the state authorities to carry its laws into effect; and on the continuance of this *auxiliary system*, as we have already observed, depends in a great measure the preservation of the Union, as it now exists.

This Union has already experienced severe trials, but has come off victorious from them all. Nor is there any real danger to be apprehended, while the people remain virtuous, and true to themselves. What ambition and luxury and the increasing spirit of party may produce in a series of years, it is impossible to foretell. All that the patriot can do, is to

wish that the period of the dissolution of this happy Union may be protracted to the end of time.

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