THE

CONSTITUTIONAL INSTRUCTOR,

FOR THE

USE OF SCHOOLS.

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PREFACE.

THE most important thing required by way of preface is an acknowledgment of the sources from which the following work has been drawn. From its own nature, as a compilation of particulars from a variety of sources, it seemed almost impossible to give the proper credit in detail, either by quotations or by marginal references. And even if it were practicable, the unavoidable disfiguring of the page is a reasonable objection to that course. The difficulty is farther increased in the present case by the fact that it was convenient for me to use the language of authors with all degrees of variation from an exact transcript of their words to a mere expression of their sentiments in words wholly my own. I have therefore determined on a general acknowledgment in this place of my indebtedness to Blackstone's Commentaries, Paley's Moral Philosophy, Story on the Constitution of the United States, Shurtleff's Governmental Instructor, Parley's Young American, Chipman's Principles of Government, Moulton's Constitutional Guide, Robbins' World Displayed, and in an especial manner to the Madison Papers. The

latter publication has been my constant guide in what I have said on the history of the United States Constitution and the method of its formation and adoption. It was this which suggested my plan, and gave me my most prevailing ideas of the best method of getting up an elementary work on constitutional government for the schools of this country.

It is proper also to say that this work was written out before the late revolution in France, so that what is said on the government of that country does not apply to its present state. I have, however, determined to let it remain as at first written, both on account of the present unsettled state of the French constitution, and as giving some idea of its form under the recent monarchy.

It will be observed that there are some repetitions of certain parts of the British constitution. These I trust will be excused on account of the necessity, according to my plan, of exhibiting the British constitution in one place by itself, and contrasting it in another with the United States constitution.

To conclude,—as I cannot claim perfection for my work, so I commend it to the candid consideration of a generous public; and I shall be very grateful for any criticisms or suggestions, from any source, which may help to increase its value, should another edition ever be called for.

D. P.

Brookfield, Vt., July 12, 1848.

INTRODUCTION.

One of the first things which a man should learn, in order to discourse intelligently of state matters, is the distinction between *organic* and *statute* law. This is peculiarly important for the subjects of a popular government, whose duty it is, by the terms of the civil compact, to sit in judgment at stated times on the conduct of their rulers. Indeed, where the government is despotic, especially if it be oppressive or tyranical, the opposite of this rule may be the best; for the more ignorance the more peace. The little happiness the subjects of such a government enjoy, or fancy they enjoy, mainly depends on their not knowing their own wrongs. And "if ignorance is bliss," or the only available substitute for it, certainly "'tis folly to be wise." But where it is the duty and privilege of the citizen to exercise a free censorship over public men and measures, the knowledge I begin with recommending is of prime importance. For want of it, and of other information growing directly out of it, men often act in an extravagant and ridiculous manner; they express confident opinions on matters on which they obviously have no adequate ideas; they discover their

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What important distinction is named? Who especially should learn this? Where may the opposite of this rule be best? For want of this learning how do men often act?

ignorance to all but themselves ; violent and capricious changes take place in the administration of government; wise and excellent men, both in and out of office, are baffled, embarrassed, defamed, abused ; while the ambitious, the designing, and the unprincipled, are intrusted with the liberties of the people.

The organic law of a state is its constitution. It is not essential to the being of a constitution that it should have been formed at once, or by any body of men convened expressly for the purpose. Nor that it should be any where embodied in a single document, drawn out into articles and sections. Wherever we find established rules and principles which circumscribe the ordinary law-making power, constituting a boundary which that power cannot overstep, there we find so much *constitution*. And the aggregate of all such rules and principles acknowledged in any one state, is the whole constitution of that state. Whatever the law-making power may do, within the meaning of those rules, their acts will be constitutional. Hence a strictly constitutional law may be very unequal and oppressive ; and a very wise and salutary rule may fail of effect for want of constitutional authority.

The constitution of a state may have been the work of ages. Like a house, which, when originally built, was according to the proprietor's notions of his own means and needs. But after inhabiting it awhile, he found enlargements and alterations desirable, which, according to his ability, he effected. Succeeding occupants, profiting by his experience, and in the exercise of their own wisdom, have made other changes; till finally the house may be an excellent one—perhaps the best in the world, though obviously not perfect;

What changes take place? What other effects?

What is the organic law of a state? What is not essential? Where do we find the constitution of a state? Are constitutional laws always equal and beneficial?

What may have been the work of ages? What simile is introduced?

but the questions, who built it? when was it built? what were the materials? and from whence did they come? would require very long answers. The British is a remarkable example. Where it began it may be hard to say; but in retracing British history, every time we come to a circumscription of the power of the monarch, or the nobles; a definition of the power of parliament; or an acknowledgement of the rights of the people,—the Magna Charta of John, and the trial by jury of Alfred,—we find something of the British Constitution. And it is not necessary to suppose that all or any of these changes were either wise or beneficial. Be they what they may, they are a part of the constitution, and as such must be acknowledged.

Only a small part of mankind live under constitutional governments. A vast majority are the subjects of absolute monarchies or irresponsible oligarchies, which, however mildly they may happen to be administered, afford the people no guaranty of property, liberty, or life. The Scripture testimony concerning Nebuchadnezzar is true of a vast majority of sovereigns to this day. "Whom he would, he slew; and whom he would, he kept alive; whom he would, he set up; and whom he would, he put down." Or if not, it is because for the time they are held in check by factions, which it is expected that they will conquer and control as soon as possible. From this kind of government there exists every grade of variety up to the most complete liberty consistent with a government of law.

It is obvious that all mankind are not fitted for the same form of government. Many tribes, from their ignorance, depravity, and utter want of civilization, are incapable of any measure of self-government. It

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What remarkable example? What particular things are named as points in the British Constitution?

What part of mankind live under constitutional governments? Of what are the majority the subjects?

For what are all mankind not fitted? What is said of many tribes?

would be no blessing to them to have any measure of their public concerns in their own hands. Hence absolute monarchy is best for them. They ought, indeed, to be taught, informed, and prepared, in the readiest way, for self-government. But they need, *ad interim*, to be held in their place by the strong hand of power. Parental government is of this kind. The child comes under his father's power without any of his own consent. And if that power is abused, he has no remedy. Others may, to some extent, undertake for him, but he cannot undertake for himself. This, however, is the right kind of government for the child. It results from his own nature. He is fit for nothing else. Just so many communities of men are fit for nothing but a military despotism. While others, like a child advancing toward his majority, may be trusted with more and more of their own concerns, as their characters are more and more formed by law, literature, and religion, until they can profitably enjoy the most free and popular forms of government.

Hence a constitutional government is to be sought for those who can appreciate it,—who have the means, and can use them, for enforcing its provisions. Where these conditions are not found, despotism is as good as any thing else,—and possibly better.

Law, in an absolute government, is simply the published will of the sovereign. When any established restraints are imposed on him, there is an approach to constitutionality in the government. Even the law of the Medes and Persians, "that no decree nor statute which the king established might be changed," operated as a check on the monarch. Its tendency was to make him cautious in his enactments, and though obviously

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What is best for them? What government is of this kind?
For whom is a constitutional government to be sought?
What is law in an absolute government? When is there an approach to constitutionality? What of the law of the Medes and Persians?

absurd and irrational, it had in it the nature of a constitution.

The Greeks and Romans of ancient times enjoyed constitutional governments. The history and structure of these form an interesting branch of study. The British constitution has been referred to as a remarkable modern example. Others might be named of more or less note. But the example, confessedly the most remarkable that the world affords, is the constitution of the United States. It is remarkable from its nearer approach to perfection than other national compacts have made, and its consequent marking of an era in the history of human improvement. It is remarkable, too, from the manner of its adoption. Other constitutions, often the best features of them, have been the result of convulsion, and their progress has been marked with slaughter and blood. But the United States constitution was a work of peace. Not a sword or a musket was put in requisition. Not a single military movement was made. The whole was a spontaneous movement of the people, acting by their delegates in a peaceful convention. And it is remarkable for having been produced at once, whole and entire, with the exception of a few amendments, adopted according to its own provisions, and the embodying of the whole in a single document, forming a separate state paper. In all these respects it is without precedent in the annals of mankind. And in view of the privileges it confers, and the corresponding obligations it imposes, it becomes a matter of prime importance that it should be carefully studied. If the mechanic should serve an apprenticeship with an accomplished master; if the farmer should understand the value of different soils, and

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What examples, ancient and modern, of constitutional governments? What is the most remarkable example in the world? For what is it remarkable? In what view does it become a matter of importance that it should be carefully studied? What similes from the mechanic, farmer, etc.?

the best method of turning them to good account; if the merchant should know the value of merchandise, and the principles of trade; if the lawyer should store his mind with legal science; if the physician should acquaint himself with anatomy, physiology, and materia medica; and if the preacher of the gospel should be versed in theology; then, for equally cogent reasons, not only should every United States officer, in each department, be familiar with the constitution, but every freeman should also be thoroughly instructed in it. And public opinion should pronounce that man unfit to go to the polls, who is unacquainted with the structure of his government, and with the powers and duties of public officers. And for this purpose, some plain exposition of the constitution ought to be a text-book in every primary school. Every school-boy should be able to repeat the substance of it by the time he is old enough to study grammar. The science of government should be a leading branch of instruction in all our high schools. And it should form a separate department in all our colleges. If, as an eminent writer says, "the science of government is the last acquisition of man," surely all these precautions thrown around our government would be none too much to show a suitable affection for it, to hand down our free institutions uncontaminated to posterity, and to crush that miserable quackery in politics which so deplorably disfigures our history.

Instead of this, even here, even in New England and the western states, where the maxim is especially taught that "all power is in the people," the most enlarged charity can but admit that the public mind is greatly uninformed, both with regard to the extent of popular power, and the reasons why it was lodged where it is. To say nothing of the thousands of for-

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What should public opinion pronounce? What is necessary for this purpose? What must the most enlarged charity admit?

eigners annually pouring upon our coast, bringing with them not only total ignorance of our institutions, but principles and habits of feeling and thinking radically hostile to them, multitudes of native citizens—numbers sufficient to hold the balance between any two parties that ever divided our national councils—know no more about our constitution than they do about the Talmud; and if they should find it any where without its heading, they would probably be at a loss what it might be. And yet such men are often among the most busy partisans,—active at elections,—running and riding,—securing votes,—and getting "great victories." They wield weapons of great power, it is true; but they know not where or for what to strike; they see nothing distinctly, yet they lay about them, and cut right and left, with all the valor of Don Quixote fighting the wine-skins in his sleep and with his eyes shut. In this way the most grave questions are determined, or may be determined; hence an electioneering campaign becomes, not an endeavor to convince the understandings of the well-informed, but a scramble to secure the votes of the ignorant. The low means to which partisans descend for this purpose need not be detailed. He that succeeds is the best fellow; he has gained his point, and got a lucrative office; and little does he care for the opinions of the wise.

To prevent such perversions of the trust reposed in every freeman, the author would be glad to contribute. And the only way to do it is properly to enlighten the public mind. This would undoubtedly effect the object. There is virtue enough in the people to secure the permanency of our free institutions, if they were informed how they might do it. The ignorant are prejudiced, but prejudices would vanish sufficiently for

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What do foreigners bring with them? What is said of multitudes of native citizens? How do such often conduct at elections?

For what is there virtue enough in the people? Who are prejudiced?

self-preservation, by proper instruction. Light is convincing. Ignorance is the strong-hold both of error and despotism. And no despotism is more ruthless and absolute than that which is practised under the guise of democracy, and attended with vehement protestations of deference to the people. And when such subjects are up, and call for action, as banks, tariffs, and treasuries; revenue, protection, and post-office laws; Texas, Oregon, and slavery; it is the duty of every voter to be able to give a reason for his vote, and to show that that reason is in accordance with the constitution and genius of our government.

Of what is ignorance the strong hold? What despotism is as ruthless and absolute as any other? What subjects are named as requiring a voter to have a reason for his vote?

CONSTITUTIONAL INSTRUCTOR.

In order to a proper view of the nature and powers of the United States' government, the following subjects are necessary to be brought to view :—

1. The British Constitution ;
2. The old Confederation ;
3. The history of the Convention of 1787 ; and
4. The Constitution of the United States. Under this head it will be proper to take occasional notice of the principles of other governments; the arguments and authorities depended on by the Convention for their guidance ; and in a few instances the questions in practice which have arisen under the United States' Constitution.

What subjects are necessary to be brought to view ?

PART I.

THE BRITISH CONSTITUTION.

It is proper to begin with a somewhat particular notice of this form of government, for several reasons:— 1. It has many excellencies. It is the work of ages, and the result of vast experience and observation. And it certainly has in it the elements of strength and durability. This is proved by the vast extent of the British empire, and the great antiquity of its government. 2. It is the government out from under which our fathers passed when they became independent. And with this government they were satisfied, and to it they were ardently attached. The utmost they wanted was to enjoy the rights of British subjects. They had no thought of establishing a better government than they were already under, but merely of securing to themselves the enjoyment of the rights which the British government was, by its own nature, bound to defend. 3. It was the great model which the framers of our Constitution had continually before them. Many members of the Convention felt and ex-

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What is the first reason for beginning with the British Constitution? How are its strength and durability proved? What is the second reason? What was the utmost that our fathers wanted? What is the third reason?

pressed an enthusiastic admiration of it. And all looked upon it with great respect. They wished indeed to form a very different government; and to do this their aim was to embody the excellencies, while they avoided the defects, of the British Constitution. In order to judge how far they succeeded, and of the excellencies and defects of the Constitution which they framed,—for that it had defects they were not disposed to deny,—the following abstract may be a source of some safe instruction.

I. *Legislative Department.*

1. The Legislative power is exercised by the Parliament, consisting of the King, Lords, and Commons.

2. The kings of England were never absolute. Ancient records show that in the earliest times they were assisted and advised by councils, known by various names, as "the great council," "the great meeting," and "the meeting of the wise men." Indeed, the British Parliament, in some name or form, is of immemorial usage, and its origin cannot be traced. But it will be sufficient to view the Parliament as it has been constituted for the last six hundred years, during which time, if not before, the Lords and Commons have composed separate bodies in Parliament.

3. The Parliament can ordinarily be assembled only by the royal authority. The king issues his writ, by advice of the privy council, for the convention of a Parliament already in being, or for the election of a new one, i. e. of that part which is elective and not hereditary. This writ must be issued at least forty

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What did many members of the Convention feel and express? What did they wish?

By what is the legislative power exercised?

Were the kings of England ever absolute? About how long has Parliament been constituted much as at present?

By what authority alone can Parliament be ordinarily assembled?

days before meeting. And the king must in this way convene the Parliament at least once a year, and oftener if he pleases.

4. The king can also at pleasure prorogue or dissolve a Parliament. A Parliament is said to be *prorogued* when it is merely adjourned, or its present session terminated. In that case, the commissions of the Commons continue in force, and the next meeting of Parliament will be an assembling again of the same members that separated on the prorogation. Thus there may be repeated sessions of Parliament without any new election.

5. A Parliament is *dissolved* when the commissions of the Commons are annulled or terminated; which makes a new election necessary in order to the next session.

6. The Commons consist of Knights, Citizens, and Burgesses. Knights are chosen by *counties*. A man, in order to be a legal voter for a knight, must be in possession of lands or tenements within the county to the value of forty shillings a year. Such estate may be the voter's property in fee simple, or it may be held by a lease for life. Knights therefore are the representatives of the landed interest of the kingdom. A knight, also, is required to be in possession of real estate to the value of 600 pounds per annum.

7. Citizens and Burgesses are chosen by cities and other incorporated towns and villages of more or less note, generally designated either as *cities* or *boroughs*. They must possess an estate to the value of 300 pounds per annum. The number of representatives sent by

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How long before meeting must the king's writ be issued? How often must he convene the Parliament?

What can the king also do at his pleasure? What is the difference between a prorogation and dissolution of a Parliament?

Of what do the Commons consist? How are knights chosen? What estate must a knight have?

How are citizens and burgesses chosen? What must they possess?

such places depends solely on the royal patent granting them the right to be represented in Parliament, and by no means on the number of their inhabitants. Hence the change in population and wealth, that is perpetually taking place, has no effect on representation. A borough or village may become so deserted that it shall not contain a single voter; and yet the holder, or holders, of the land, wherever he or they may reside, may send to Parliament all the representatives named in the original patent. And this may be as great, or even a greater number, than is sent by another place which has grown up in the same time to half a million of inhabitants. To which it may be added that a village may arrive at any degree of importance without the right of being represented at all, not having as yet received the royal charter, or letters patent, for that purpose.

8. The qualifications of electors of Citizens and Burgesses are also as various as the places which are represented. In general, Citizens and Burgesses are supposed to represent the trading interests of the kingdom, and some property qualification is required to make a man a legal voter. This depends on many circumstances, which are generally referable to immemorial usage, the conditions of the corporation, or the king's patent conferring the right of representation.

9. In addition to the representation of the counties, cities, and boroughs, the three universities of Oxford, Cambridge, and Dublin, send each two members to the House of Commons. This privilege is granted in consideration that many eminent and useful men, not connected with the landed or mercantile interests, are connected with those institutions; and that it is but rea-

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On what depends the number of representatives of cities and boroughs? What inequalities arise from this rule?

What is said of the qualifications of electors of citizens and burgesses? What of those of legal voters?

What universities are represented? and why?

sonable that some one or more should be in Parliament, charged with the interests of the republic of letters.

10. The inequality of representation, together with the property qualification required of voters, operates so that a majority of the Commons are chosen by an amazingly disproportionate minority of the people. This incongruity is heightened by the liberty of electors to give votes wherever their property may lie, without regard to their own place of residence. Thus a man may vote, either personally or by proxy, in every county, city, or borough, where he happens to possess the required property qualification. And thus an election is often in reality nothing more than a nomination by the proprietor of a great estate. It should be noted, however, that the reform-bill, passed in 1832, greatly extended the right of suffrage, in the election of the Commons, to the middle classes of the people. Also that the representative of any city or borough may reside any where in the kingdom.

11. British writers acknowledge these improprieties; but they attempt to excuse or lessen them, by saying that if a property qualification were not required, multitudes of indigent persons, not to say also ignorant and vicious, who are so dependent as to have no will of their own, would be at the will of unprincipled and grasping demagogues, who would corrupt the purity and pervert the purposes of elections, by purchasing the votes of all such persons. And on the inequality of representation, they say that representatives, wherever and by whomsoever chosen, are chosen for the whole kingdom, rather than for the particular district by which they are chosen; and that they are in no particular sense amenable, or accountable, to their constituents. And finally, as the House of Com-

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What remarks on the inequality of representation? What of the reform bill?

How do British writers excuse these irregularities?

mons is as able and disinterested a body, in their opinion, as could by any other means be collected, they contrast the prospect of obtaining any remunerating reform in representation, with the danger of breaking in upon immemorial usages, and customs deeply seated in the prejudices especially of the wealthy and influential.

12. Besides the property qualification already noticed, a seat in the lower house is guarded by a great number of requirements, or prohibitions, the most important of which are these:—Members must be natural born citizens, not attainted of treason or felony, not under twenty-one years of age; they must not be clergymen, nor must they hold any office, the duties of which would interfere with their duty in Parliament, or which would lay them under temptation to legislate corruptly. Of the first kind are the offices of sheriffs, mayors, and bailiffs; and of the second, of which there is a considerable number, are all such as would involve the principle of a member's holding a place the profit of which Parliament alone can create or increase. Neither can a pensioner under the crown during pleasure, nor one holding any office under the crown, which would give the crown any influence over him, have a seat in the House of Commons.

13. The Commons choose their own Speaker, whose duty it is to preside and preserve order in their sittings, and manage the formalities of their business. But he cannot give his opinion, or argue any question before the house. The speaker must be approved by the king before he can enter on the duties of his office.

14. The House of Lords is composed of Lords spiritual, and Lords temporal. The Lords spiritual are three Archbishops and twenty-seven Bishops, who are

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How else is a seat in the lower house guarded?
What of the speaker of the House of Commons?
How is the House of Lords composed? Who are lords spiritual? Why admitted?

admitted to seats in the House of Lords in right of their succession to certain estates in lands, which their ancestors have held by feudal tenure since the time of William the Conqueror. The admission of these ecclesiastics is justified by considering the number and importance of the clergy, and their exclusion from the House of Commons.

15. The Lords temporal are farther distinguished by the appellation of *Peers of the realm*, which Lords spiritual are not. Some of these hold their place by *descent*, and are called ancient peers,—their honor coming to them through a long line of ancestors. It is traced, not to the royal patent, but to some civil or military authority held by their ancestors. Some hold their place by *creation*, i. e. they, or their ancestors, have been created peers, which means that the king, by his patent, has conferred the peerage on them. Finally, the Scotch peers, sixteen in number, and the Irish peers, twenty-eight in number, hold their places in Parliament by *election*, being chosen in Scotland and Ireland to represent the body of the nobility in each country.

16. The Lords temporal are Dukes, Marquises, Earls, Viscounts, and Barons.

17. A Duke is considered next in honor below the king. The name is undoubtedly derived from the principal chiefs, generals, or leaders of armies, of feudal times, when the Roman state was becoming merged in the petty kingdoms and principalities of Europe. It was customary then for the territories of the conquered nation to be divided among the generals of the conqueror, and these were the hereditary possessions of their posterity; hence a duke always has possession of a certain territory, called a *dukedom* or *duchy*.

How are lords temporal farther distinguished? What difference between ancient peers and peers by creation? What of the Scotch and Irish peers?

18. A Marquis is next in honor to a duke. The name is derived from an ancient word, signifying a *limit*, or *boundary*. The office was to guard the limits, or bounds, of the empire, while hostile incursions were feared from Wales and Scotland. The possessions of a marquis, when that title is not a mere ensign of honor, are called a *marquisate*.

19. An Earl is next in honor to a marquis. Anciently they had each the civil government of a *shire*, or what is now a county. This government is now devolved on other officers, especially the sheriffs, so that the name is now a mere title of honor. The etymology of the word seems to mark it as anciently meaning an *elder* or *senior*. The possessions and dignity of an earl are called an earldom.

20. A Viscount is next in honor to an earl. This is much the same as an earl's deputy. Earls were for a time called *counts*, after the Norman conquest, and their shires or jurisdictions are still called counties. Hence the next inferior officer was called a *vice-count*, or viscount. No authority is at present attached to the name.

21. A Baron is next in honor to a viscount. This is the most general and universal title of nobility in Great Britain. It seems indeed to have been the origin of all others, as a *barony*, or some extent of territorial jurisdiction, seems anciently to have belonged to every degree of nobility. But when a baron was raised to a new degree of peerage, it sometimes happened that the honors of the two estates descended differently,—those of the barony, for instance, to the oldest male heir, and those of the earldom to all the male heirs, or to male and female heirs conjointly; so that a peerage often subsists without a barony. The same happens also sometimes by the creation of earls and viscounts without baronies, i. e. without territorial

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What titles are among lords temporal? Give some account of each.

jurisdictions. Hence not every peer is a baron; but a peer, of whatever grade, is also a baron, if he has a barony added to his other honors.

22. The Speaker of the House of Lords is the lord Chancellor, or keeper of the king's great seal; or the king may appoint one by his commission; or, in the failure of both these ways, the House of Lords may elect a speaker.

23. If the speaker of the House of Lords is a lord of Parliament, elected by the house, or appointed by the king's commission, he may speak to, or argue, any question before the house.

24. Both houses may originate bills, except for raising a revenue, which must always begin in the House of Commons.

25. A bill, in order to pass, goes through three readings in each house, receiving such amendments and suggestions as are made and approved on the way. If amendments are made by the reviewing house, they must be sent back to the originating house for their concurrence. Should this not be given, and should the houses fail to agree by a conference of committees, the bill is lost. But the Lords can make no changes, or new-modelling, of a revenue-bill, neither can the Commons alter a bill respecting the dignity or privileges of peerage.

26. Peers may vote in Parliament by proxy, but Commons cannot. It is understood, however, that the king grants this license to the peers, and that they use and acknowledge it as a royal favor.

27. Each house is the sole judge of the claim any one of its own members has to his seat; or whether

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Who is the speaker of the House of Lords? What privilege has he when elected by the house?

What may both houses do? What exception?

How are bills passed? In what cases are they lost? How are the Lords restricted from altering a bill? and the Commons?

What rule in voting by proxy?

Of what is each house the sole judge?

any informality, attainder, forfeiture, or legal disability, renders it proper that a seat should be declared vacant.

28. Freedom of speech and debate in Parliament is held sacred, and no member is liable to be questioned in any other place on things which he may say in Parliament.

29. Members are free from arrest on civil cases,—peers at all times, by the privilege of the peerage; and commons, by the privilege of Parliament, for forty days before meeting, during session, and forty days after the prorogation of Parliament.

30. A dissolution is the civil death of a parliament. But if the death of the king should happen before the election of a new parliament, the last parliament revives and continues in authority for the term of six months. This is also the longest time any parliament can exist after the death of the king. A parliament can therefore come to its end in three ways,—by the royal prerogative, by the death of the king, and by length of time, which at present is seven years.

31. In respect of the operation of laws, members of parliament are all private men, and subject to all the laws which they enact.

32. Formerly members had a right to draw from the national treasury a suitable remuneration for their services during session. But recent authority says that members of parliament receive no pay.

33. Before taking seats, members must take the prescribed oath of allegiance, and formerly also against popish sentiments and partialities. But at present,

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What is said of freedom of speech?
What freedom from arrest do members enjoy?
What is a dissolution of parliament? What if the death of the king happen before the election of a new parliament? In how many ways may a parliament come to its end?
Are members paid for their services?
What oath must members take?

Catholics are admitted to seats in the House of Commons, and to other offices.

34. The numbers, both of Lords and Commons, are unsettled, but are generally on the increase. Within fifteen or twenty years past, the House of Lords has consisted of 426 members. Among these have been reckoned 2 English archbishops, 24 bishops, and 4 representative Irish bishops. One of these last is probably an archbishop. There were also 25 dukes, 4 of whom were of royal blood; 19 marquises; 109 earls; 18 viscounts; 181 barons; and 16 Scottish and 28 Irish peers. In the House of Commons, at the same time, were 471 members from England,—of whom 324 were chosen by boroughs, 143 by counties, and 4 by the two universities of Oxford and Cambridge; 29 from Wales, 14 chosen by boroughs, and 15 by counties; 105 from Ireland, 39 chosen by boroughs, 64 by counties, and 2 by the university of Dublin; and 53 from Scotland, 23 chosen by cities and boroughs, and 30 by counties; total in the Commons, 658. The constituency is about 1,200,000, or one twentieth of the population. Total in Parliament, 1,084.

II. *Executive Department.*

1. The Executive power is vested in a single person, the king or queen. The crown is hereditary, or descendible to the next heir, according to a fixed rule of succession. This rule it is not important to state here particularly; but we may observe that males and females alike succeed to the throne, although males have the preference; for a son succeeds in preference to his elder sister. Still, regard is had to the direct

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What is said of the numbers of members in the British parliament? In what is the executive power vested? State the rule of succession.

line, for a daughter in that succeeds in preference to a son in a collateral branch. It is only when the line becomes extinct that heirs are sought in the families of brothers or sisters of any past monarch.

2. The Parliament also has a degree of authority over this matter. An instance or two will be sufficient to be noticed. When James II became a papist, and departed out of the kingdom, the throne became vacant. On this occasion Parliament settled the succession upon William and Mary, and the survivor of them. William was a descendant of Charles I, and Mary was the oldest daughter of James II, the papist. They ordained that the crown should descend to the heirs of the said Mary, or in default thereof, to Anne, the second daughter of James II, and her heirs; and in default of such issue, to the heirs of William. The princes William, Mary, and Anne all dying without issue, Parliament again interposed, and fixed the succession on Sophia, the grand-daughter of James II; but as she died before Anne, her son, George I, succeeded to that princess.

3. King Egbert came to the throne about the year 800. Under him was formed the union known as the Saxon heptarchy. From him the Saxon princes regularly inherited the throne for over two hundred years, to Edmund Ironside. From him Canute, of Denmark, seized the kingdom, in whose family the regal power continued for three reigns, when Edward the Confessor, a brother of Edmund Ironside, was placed on the throne. This was partly owing to the disturbance of the times, for Edmund had a son Edward, the true Saxon heir, in exile. On the death of Edward the Confessor, without issue, William the Norman, claiming under a grant from Edward, and Harold, another

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What authority has parliament over this matter? When was it ever exercised?

Give some account of the succession from the time of Egbert.

aspirant to the throne, contended for the government. The fate of battle gave the throne to William. After various and some violent changes, and alliances by marriage, the Saxon line was partially restored in Henry II, and still farther in James I. So that the present royal family are lineal descendants both of king Edmund Ironside, and of William the Norman, otherwise called the Conqueror.

4. The king alone has the power to convene the Parliament. It is true that regard must be had to the necessity of the case; as was shown by the parliament that restored Charles II, which met a month before his return; also of that which met and disposed of the crown and kingdom on the abdication of James II, in 1688.

5. The law ascribes sovereignty to the king; i. e. it places him in subjection to no power on earth; but makes him the head, both civil and ecclesiastical. Hence no suit or action can be brought against the king, as both his person and property are sacred, let his measures be what they may. The remedy for the subject is, in a civil case, to petition the king for redress; which it is understood that his chancellor will give as a matter of *grace*. And in a case of public oppression or crime, as the king does nothing without his counsellors, they may be impeached and punished; and parliament has a right to address the king, and to know by whose advice any measure is pursued. But until the constitution is attacked, the maxim is that the king can do no wrong. If, however, the fundamental, or organic law, should be violated by the king, the precedent supplied in the history of James II, would seem to apply to the case.

What power has the king alone? What regard to necessity must be had?

What does the law ascribe to the king? Who is responsible if he does wrong?

6. The king not only cannot do wrong, but he cannot *mean* wrong; and not only so, but he is above the common frailties, weaknesses, and follies of mankind. If he acts unadvisedly, weakly, or foolishly, the law presumes that he was deceived; and, if necessary, the courts set aside such acts as void on account of the deception. In the same strain, no claim of the king can be outlawed, and he is never a minor, or under age. In cases of need, however, a protector, or regent, may be appointed for a limited time.

7. The law also considers the king *immortal*. There is no interregnum on the death of the reigning prince, but the kingship passes to his heir.

8. The law considers the king as *absolute*. In the rejection or approval of bills, the making of treaties, the coining of money, the creation of peers, the pardon of offences, etc., he can do as he pleases, subject only to express constitutional limitations, which owe all their binding force to his approval. Within the forms of the constitution, he is irresistible and absolute. It is he that sends and receives ambassadors, forms treaties, leagues, alliances, etc.; declares war, makes peace, administers justice; is the fountain of all authority; and, in fine, "whatever is done, he is the doer of it." Something like an exception may be found in the authority of ministers to grant letters of marque and reprisal, where a nation refuses justice, and the king refuses to declare war for just cause.

9. We have already seen that the king is considered as one branch of the National Legislature. His power is never exercised in Parliament by presiding over, or joining in their deliberations, but in bringing business before the Legislature, and approving or rejecting bills that have passed both houses. It is remarkable, how-

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Give some farther account of the manner in which the law views the king.

How is the king's power exercised in parliament? How long since he has rejected a bill that has passed both houses?

ever, that if, after all that the king can effect against a bill by his influence, by the creation of new peers, or by chartering new corporations to be represented in Parliament, it still passes, he considers the current in its favor too strong for him safely to resist; so that there has not been an instance of the king's vetoing, or rejecting a bill which has passed both houses of Parliament, since the year 1692.

10. The king is commander-in-chief of all the land and naval forces of the kingdom. He only has power to declare war, to build fleets, and to raise armies. It is he that establishes forts, arsenals, and places of strength, and of all such places he has supreme command. It is he that appoints ports, havens, and all places for the ingress and egress of merchandize. He erects beacons, light-houses, and other sea-marks, necessary for the safety of ships.

11. The king is the fountain of justice. All writs are issued in his name; especially in criminal cases, he is the prosecutor. Hence it is necessary to consider the king, or rather the regal office, as every where present in his dominions. He only issues proclamations; he is the fountain of honor, office, and privilege, and erects and disposes of them. He appoints and receives foreign ministers; he establishes public markets, fairs, and places of buying and selling; he fixes the standard of weights and measures; and he alone coins money, and regulates the value of it.

12. Finally, the king is the head of the church. It is he that convenes, prorogues, regulates, and dissolves, all ecclesiastical convocations. Of course, he must be a protestant himself, and in his coronation oath he swears not only to "govern the people of England and its dominions according to law; to cause, as far as

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Of what is he commander-in-chief? As such what does he do?
Of what is he the fountain? What does he do in such capacity?
What relation does the king sustain to the church? What of course must he be? What does he swear in his coronation oath?

possible, law and justice, in mercy, to be executed;" but "to the utmost of his power to maintain the laws of God, the true profession of the gospel, and the protestant reformed religion established by the law; also to preserve unto the bishops and clergy, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them."

III. *Judiciary Department.*

1. The Judicial Power is vested in the various courts of the kingdom. A few of the higher courts only it will be sufficient to notice, premising that the county and other inferior courts are more or less local in their jurisdiction, with an appeal to the higher courts.

2. The "four courts of Westminster Hall" are considered as the king's superior and original courts of justice. They are probably so called because they belonged in some form to the early history of the monarchy, while other courts have been established by legislation in later times.

3. The first of these four courts, as standard writers enumerate them, is the court of Common Pleas. This is a court for the trial of civil causes only, and such as arise between one subject and another. Causes in which the king is considered the plaintiff, called *pleas of the crown*, are never brought before this court. An appeal lies to this from inferior courts. It has also original as well as appellate jurisdiction. From this court an appeal lies to the court of king's bench.

In what is the judicial power vested?
What of the four courts?
What is the first of these called? What causes are tried in it? What are never tried in it?

4. The court of King's Bench comes next under notice. It is held at Westminster because the royal family is more settled than formerly; for in the ancient constitution of it, the court followed the king in all his removals; and therefore, to the present day, all writs issued by this court are returnable to any place wherever in England the king may be.

5. This court has a very high jurisdiction. It may stop proceedings in any inferior courts, and remove causes from them to be determined by itself. It takes cognizance both of criminal and civil causes. In the former the king is always the plaintiff, and that department which prosecutes criminal causes is called the crown-side of the court; while that which adjudges civil causes is called the plea-side of the court. On the plea-side it has original jurisdiction of all causes which, like trespass or fraud, have something in them of a criminal nature, though the action is brought only for a civil remedy. For such an action makes the defendant liable to pay a fine to the king as well as to the injured party. But an action of debt cannot be brought in this court, unless by statute, by a fiction of law, or by an appeal from the common pleas or some other inferior court. The object of this court is to give summary redress to the subject in any part of the kingdom, by allowing him to remove his cause at any time from an interested or incompetent court to one against which there can be no objection. Yet even from this court there is an appeal to the House of Lords, or to the court of Exchequer chamber.

6. The court of Exchequer takes cognizance of causes which originally came before the court of king's

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What is the next court called? Why held in Westminster? Where are its writs returnable?

What is the distinction of the *crown* and *plea* side of this court? What is the object of this court? Where is the appeal from this court?

What is the next court called? What causes does it take cognizance of?

bench. These relate to the collection of the revenue, and of the king's debts and duties. This is a court of law, one whose duty it is to determine what the law is; and a court of equity also, or whose duty it is to judge of the intention of the law, where the words are too severe or defective. Those who are indebted to the king may sue in this court, being supposed less able to pay the king his due, by the delinquency of the defendant. Hence the clergy, who must pay their annual tenths to the king, sue in this court for their tithes. And by what is called a fiction of law, any man may sue in this court by suggesting that he is the king's debtor. Cases both in law and equity may be brought before this court in this way, i. e. by the suggestion, which is never questioned, that the king is concerned in them. It would seem that it has only original jurisdiction.

7. From the equity-side of this court there is an appeal to the House of Lords. From the law-side an appeal lies first to the court of Exchequer chamber, and subsequently from that to the House of Lords.

8. The last, and in some respect the most important, of the "four courts," is the court of Chancery. Its chief officer is the lord chancellor, so called, probably from the object of the court, which is to cancel such of the king's patents, or acts, as in which he has been wrongly advised, deceived, or has acted on untrue suggestions. As the king is supposed not to intend wrong, it is presumed he will make amends and retractions wherever he has thus been led to injure any of his subjects; and as he is supposed to do this as a matter of conscience, and not by compulsion, and such matters being assigned to the chancellor, that

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What is its duty as a court of law and equity?
What appeals are there from this court?
What is the last of the four courts? Who is its chief officer? What is its object? Why is the lord chancellor called the keeper of the king's conscience?

officer is called the keeper of the king's conscience. He is also the keeper of the great seal, and one of the privy council. From this court the king's writ is issued for the convention of Parliament, as well as a great variety of other writs, commissions, and the like, and whatever else passes under the great seal. It is open to the subject at all times, who can have, as a matter of justice, such writ as his occasions call for.

9. This is a court both of law and equity. It is not necessary here to notice farther the amount or kind of business to which this court is competent. We may add, that it has no power to summon a jury, and therefore when a fact is disputed between parties before it, the chancellor cannot try the cause, but delivers it over to the court of king's bench. And there is, in theory at least, an appeal from a judgment in the law-side of the court of chancery to the court of king's bench, and from the equity side there is an appeal to the House of Lords.

10. Besides these four courts we will take a short notice of a few others out of a great number that might be named. The court of exchequer chamber, already referred to, has no original jurisdiction, but is simply a court of appeal, to try causes from the law-side of the court of exchequer. The House of Lords is also a court having no original jurisdiction, but to which, as we have seen, an appeal may often be made. There are also circuit courts, ecclesiastical courts, private courts, and courts of a special jurisdiction, which it will not be necessary to notice, as they do not give its form in any essential manner to the British Constitution. We will only notice farther the admiralty courts, which consist of a principal court held before the lord

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What else does he keep? What particular writ is issued from this court?

What is done when a jury becomes necessary? What appeals are there from this court?

Name some of the other courts. What is said of courts of admiralty, and the appeal from them?

high admiral of England, or his deputy, and certain courts of appeal. Before these courts causes come that arise on the high seas and in parts out of the reach of the common law courts. From these there is always an appeal to the king in chancery.

11. The judges of the four courts consist of no ascertained and invariable number, but are always sufficiently numerous to secure the advantages of united wisdom and consultation. They are independent, that is, they hold their offices during good behavior, and receive fixed and permanent salaries.

IV. *Miscellaneous Articles.*

Some things may be here noted which do not very well fall under preceding heads.

1. Trial by jury. This institution is ascribed by some to king Alfred; but it is quite uncertain to what period of antiquity its history belongs. It is a privilege which the defendant in a criminal prosecution always enjoys, to have his cause tried by twelve men who cannot be accused of partiality, and chosen out of the county where the offence is said to have been committed, and these must agree in order to a conviction.

2. Ex post facto laws. These are unconstitutional and void, because they endanger the liberty of the subject by putting the legislative and judiciary power into the same hands.

3. Habeas Corpus. This is a writ of unknown antiquity. It is of a variety of forms, and for a variety of purposes, but all agreeing in this, that it commands any officer having a prisoner in custody to produce the

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What is said of the number of judges in the four courts? What is meant by their being independent?

To whom is the trial by jury ascribed? What is said of it?

What remark concerning ex post facto laws?

What is the writ of habias corpus? How long has it been known?

body of the prisoner before the court granting the writ. It was in some form known to the old Saxon monarchy, and the use of it was acknowledged and established by the famous deed Magna Charta. But the habeas corpus act of Charles II, marks as important an era as does any other event in the history and nature of this writ. The writ is for the special benefit of prisoners. Upon complaint, in writing, and the suggestion of a probable reason to question the legality of a prisoner's detention, to any of the four courts in term time, or the lord chancellor, or any one of the judges in the vacation, a writ is issued commanding the person keeping the prisoner to produce the body of the prisoner within a short and specified time, and if the court is of opinion that the detention is illegal, he is forthwith set at liberty. And if he fail in getting the writ, or his liberty, on the first application, he may try all the courts, and all the judges, in succession, and obtain his liberty if any of them judge that he is entitled to it. And it is no matter by whom he has been committed, even though it was by the king in person. By this writ, also, a prisoner can demand an immediate trial, and not be liable to long imprisonment on suspicion or pretence of suspicion.

4. Magna Charta. This was a famous deed signed by king John, upon the demand of his barons, on the 19th of June, 1215. Many of its provisions respect things now obsolete, and of course have no present importance; but it provided that, with a few and specified exceptions, no aids or subsidies should be levied from the subjects without the consent of the great council; that no person should be tried, or found guilty, on suspicion only, but on the evidence of lawful witnesses; and that no person should be tried or pun-

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What act marks an important era in its history? How is this writ obtained? Give some account of its use.

When and by whom was Magna Charta signed? What were some of its provisions?

ished but by the judgment of his peers and the law of the land.

5. Balance of interest. This is the great security of the permanency of the British Constitution. It is found in the conflicting claims of the three estates, the king, lords, and commons. They are all jealous of each other's power, and any two will readily unite to oppose the third, if that third is aggrandizing itself, or making any encroachment on the rights of either of the others. But no two will unite to destroy the third, because both are sensible that they may need its aid. Hence each two hold the third in check, and each one is an arbiter between the other two.

6. Balance of power. This exists between the king and parliament. The king, by his prerogative, or his influence, can prevent the passage of any bill which it would be safe to oppose; while the parliament can effectually control the acts of the king by withholding the supplies necessary for any and every purpose. The whole subject of a revenue is in the hands of parliament, whether by taxation, a tariff of duties on commerce, or by any other means.

7. Privy council. This is the principal council, chosen by the king, and sworn to secresy. Their title is Right Honorable.

8. Cabinet council. This consists of ministers of state of the highest rank. Their number is from ten to fourteen. They are the Lord Chancellor, Lord Privy Seal, President of the Council, First Lord of the Treasury, Chancellor of the Exchequer, three principal Secretaries of State, First Lord of the Admiralty, and some others. Of these, the first lord of the treasury is Premier, or Prime Minister.

Where is found the balance of interest? How does it operate?
Where exists the balance of power? How can the king and parliament control each other?
What is the principal council? How chosen? Their title?
Of what number is the cabinet council? Of what ministers is it formed?

9. It will be sufficient to add, that though the British Constitution consists of acts of Parliament, royal grants, and immemorial usages, yet public sentiment exercises a sure and commanding influence, and makes it quite as improbable that the government, or any department of it, will overstep the known bounds of power, as if the Constitution were a separate document, over which the ordinary law-making power had no authority whatever.

Of what does the British Constitution consist? What is the influence of public sentiment?

PART II.

ARTICLES OF CONFEDERATION

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

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

It is important in this place to consider these Articles principally with reference to their bearing on the Constitution subsequently adopted. The experience which was had under the Confederation showed the necessity of a different organization, and led to the framing and adoption of the Constitution. Hence it is fair to suppose, that wherever there was an ascertained defect in the Confederation, the framers and advocates of the Constitution intended to provide, and supposed they had provided, a remedy for such defect. They could not but know the meaning of the new Constitution. They must have understood the language in which it was expressed, and what the Convention intended by it. A true exposition of the Constitution must therefore always agree with their understanding of the matter. This rule it is important to remember.

How is it important here to consider these articles? What had experience shown? What may we hence suppose? What did they know and understand? What rule is it important to remember?

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

ART. III. The said States hereby severally enter into a firm league of friendship with each other, for

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Many of the provisions in these Articles were found to be what was necessary and proper, and were therefore incorporated into the Constitution. These must, of course, be construed in accordance with the loose rein which the Confederation held on the States. They were generally acquiesced in by all parties; while many of those provisions of the Constitution, which were meant to supply the defects of the Confederation, have been from the first regarded with extreme jealousy by the zealous advocates of popular power.

ART. 1. If it were not too late, it would be desirable to adopt a different style, and that the United States should assume a national name, in accordance with the practice of all other nations. At this late period, however, this style seems to be our inheritance, which we must hand down to our successors. It is adopted from this Article into the Preamble of the Constitution.

ART. 2. This was intended to express a much larger sovereignty and independence than can consist with the Constitution, though it expresses, in fact, nothing but what is as true now as at any former period. This results from the principle, always safe in interpreting the Constitution, that what is not given up by the States is retained by them; and which is expressly maintained in the ninth and tenth Amendments of the Constitution.

ART. 3. The States had acted in concert from the first opposition to British injustice, through the Declaration of Independence, and the commencement of the revolutionary war. They had been held together by the bond of a common cause and common danger, as well as by a sense of individual weakness.

What is said of many of the provisions of these Articles? How must they be construed? How were they acquiesced in? What provisions were regarded with jealousy?

What is the first article? What would be desirable if it were not too late?

What is the substance of the second article? What was it intended to express? From what principle does this result? In what part of the Constitution is this principle maintained?

Give the substance of Art. 3. How had the States acted? By what bond had they been held together?

their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of

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It may be noted here that the *States*, as separate governments, were the parties to this Confederation. This was a defect in the union so formed. It was remedied by the action of the *people* in adopting the Constitution. Under the Confederation, a delinquent was always a *State*, possessing counsels and means for defence. And there was no way to coerce a delinquent State, but for the complying States to unite in making war upon it. This was the cause of many civil wars in ancient Greece, and of the entire overthrow of its confederacy. Indeed, as human nature is, every confederacy between independent States, like the one under consideration, or that of the Grecian States, must soon end, either in civil war, in total neglect and violation of its conditions, or in a voluntary abandonment of its terms for a union of a different kind.

But in the ratification of the Constitution, the *States* took no part whatever. That is, the existing State governments were not consulted, and did not act. The whole was done by the *people*, acting in their original capacity, and exercising their ultimate sovereignty. Hence, under the Constitution, a State is never a delinquent, and is never in a position to be coerced by the general government. It is the *people*, the individual *persons*, that stand in this position, and it is on them only that the general government acts.

ART. 4. The substance of this Article has been incorporated into the Constitution. See Art. 4, Sec. 1 and 2.

What is noted here? Was this a defect? How was it remedied? What was a delinquent under the Confederation? How only can such a delinquent be coerced? What did this cause in ancient Greece? How must such confederacies always end?

What took no part in ratifying the Constitution? By whom was it done? In what capacity? Who therefore can be directly acted on by the general government?

What are the leading points of Art. 4? Where found in the Constitution?

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

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

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates

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ART. 5. The power of the States to recall their delegates and appoint others; the representation of the States in Congress; the restriction on the eligibility of delegates; the method of the maintenance of delegates; and the single vote of each State in Congress; are peculiarities of the Confederation, which were set aside on the adoption of the Constitution. They show the prevailing views of the time respecting State rights, and the general unpreparedness for a stable and effi-

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Art. 5. When did Congress meet? What power reserved to the States? How were States represented?

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

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

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

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

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

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cient government. The equality of the States has been in part preserved, indeed, in the construction of the Senate. The substance of the prohibition of members' holding other offices under the United States, and of their privileges to, from, and in, Congress, is found in the Constitution, Art. 1, Sec. 6.

What restrictions on eligibility? How were delegates maintained? How many votes did each State have? What privileges were secured to members? What things were set aside by the Constitution? What do they show? What of this article is found in the Constitution?

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

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

No State shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince, or State, in pursuance of any treaties

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ART. 6. Much of this Article was incorporated into the Constitution, as may be seen by comparing it with Art. 1, Sec. 9 and 10 of that instrument.

The right of the States, to some extent at least, to lay imposts and duties, and to grant letters of marque and reprisal, is here admitted. These powers were found to be inconsistent with the national purposes of the Confederation, and were given exclusively to the general government by the Constitution, Art. 1, Sec. 8. Though as it respects the laying of imposts and duties, some latitude is given, with the consent of Congress, and for internal purposes, in Sec. 10 of the same Article.

The reasons of the provisions of this Article are obvious, and need not be argued. It seems that at that early period

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Repeat the leading prohibitions of Art. 6. Where is much of this Article to be found? What right is admitted to the States? How was it found inconsistent? Where are these powers given to the general government?

already proposed by Congress, to the courts of France and Spain.

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

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

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attempts were made to sustain the interests of the United States in the courts of France and Spain; and the state of war, in which they then were, made it proper to require of the States that attention to the training and arming of the militia, which by the Constitution is committed to the general government, and is only permitted to the States in the second Article of amendments.

State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

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

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

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States, within the time agreed upon by the United States in Congress assembled.

ART. 7. This Article is in substance retained in the Constitution. See the enumeration of the powers of Congress, Art. 1, Sec. 8. The power to appoint a commander-in-chief belonged to Congress; but since the adoption of the Constitution, it has belonged to the President with the consent of the Senate.

ART. 8. The inefficiency of the Federal government arose from such causes as begin to appear strongly in this Article.

What is Art. 7? Where is the substance of this article retained? How has a commander-in-chief been appointed?

Art. 8. How were charges for war, etc., provided for? And taxes to be levied? What inefficiency appears here?

ART. IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases

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No revenue from commerce seems to have been thought of; and the taxation, which was depended on to supply the treasury, was left to the legislatures of the several States. In practice, it was found that the States constantly violated this Article, by refusing or neglecting to supply their proportion, and hence the treasury was empty, and the credit of the Union lost. It was therefore a leading object, in framing the Constitution to put the whole power over the revenue into the hands of the general government, leaving nothing of it to the authority of the States.

ART. 9. This long article defines the powers of Congress. It is necessary to say but little in explanation of it, as it can be sufficiently understood by a perusal, and by comparing it with Art. 1 of the Constitution. Something like a judiciary is here provided for, by making Congress the body to receive ultimate appeals, and directing them to appoint courts, or boards of arbitration, to hear and determine the causes presented. Difficulties had already arisen between some of the States, especially New York and New Hampshire; and questions of jurisdiction, and the right of soil claimed under different and conflicting grants, in the territory which now forms the State of Vermont, were then pending; and it was probably with an eye to these cases that these provisions of this Article were formed.

Many of the powers here given to Congress are also conferred on it by the Constitution. But it is obvious to notice the extreme care with which State rights are guarded, even to the point of subjecting an act of Congress to the control of State judgment; for which reason, as well as the utter want of any executive power, the impossibility is apparent that Congress should enforce any of its decisions. It was impossible for Congress to enact a law on any of the subjects on which authority was professedly given them, which could lay an obligation on a State. Their decisions they called *ordinances;* and they were a perfectly dead letter until they received life from subsequent State legislation.

What was found in practice? What was therefore a leading object of the Constitution?

What does Art. 9 define? What was partially provided for? What is it obvious to notice? What could Congress not do? What did they call their decisions?

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

The United States, in Congress assembled, shall also be the last resort for an appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States, concerning boundary, jurisdiction, or any other cause whatever, which authority shall always be exercised in the manner following:—Whenever the legislature, or executive authority, or lawful agent, of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties, by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners, or judges, to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the

list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners, or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear to defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall, in like manner, be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or superior Court of the State, where the cause shall be tried, "*well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;*" provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more

States, whose jurisdiction, as they may respect such lands, and the States which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedant to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

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

The United States, in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated "a committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that

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

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any trea-

ties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of war vessels to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same; nor shall a question or any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

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

ART. X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as

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ART. 10. Some such provision was made necessary by the war in which the States were engaged, and the need that a body of some kind should be always in session to meet the emergencies which were constantly arising. Under the Con-

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What does Art. 10 provide for? Why was this necessary?

the United States, in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

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

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

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stitution the same thing is provided for by the power of the President as an executive officer, and his authority at any time to call an extra session of Congress.

ART. 11. Canada was never represented in the Congress of the United States, and the attempt on Quebec, in which Gen. Montgomery was killed, was the most that ever was done for the subjugation of that province. Yet such a state of feeling was known to exist in Canada, and such a wish was felt in the States that it should enter the Union, that it was thought best to hold out to its people the encouragement contained in this Article.

ART. 12. As the States were engaged in a common cause, equally important to all, this Article is but the dictate of justice. The same principle was recognized in framing the

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How does the Constitution provide for the same thing?

Was Canada ever represented in Congress? Why was Art. 11 adopted?

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

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectfully represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederatian and perpetual Union; KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and

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Constitution, Art. 6. But the great difficulty, and one which effectually proved the insufficiency of the Confederation, was the impossibility of enforcing any of the clsims here acknowledged, and for which the public faith was pledged.

ART. 13. The same may be remarked of this Article. Notwithstanding the solemn forms of ratification and signature, these Articles were perpetually disregarded and trampled on, especially after the return of peace. It here appears again that the Confederation was an act of the *States* through their legislatures; and as they could not be compelled to observe its stipulations, otherwise than by the force of war, the necessity arose, as we have seen, and shall farther see, that a government should be established having its claims, not on the States, but directly on the people.

Where is the principle of Art. 12 recognized? What was the difficulty here?

What may be remarked of Art. 13? What appears here again? What necessity arose?

things therein contained; and we do farther solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions, which by the said Confederation are submitted to them; and that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

We must not, however, think too lightly of the Articles of Confederation. If we properly consider circumstances, we shall see that they formed a respectable step in the progress of American government. The country was new, the nation was young, the hand of British power had always been laid on the Colonies to prevent their advancement, and society in all its departments was in a forming state. And while the country was shaken to its centre by a war with a powerful foreign nation, these Articles served a present purpose, while the people were generally unprepared for any thing better; and what was equally important, the experience of the people was aided under them, so that after the return of peace, they were able to stand on higher ground, and to see that a stable and efficient government is worth purchasing by the surrender of many private and State rights.

When and where were these articles signed?

PART III.

HISTORY OF THE CONVENTION OF 1787.

1. The labors of the Convention that framed the Constitution of the United States, on many accounts, rendered the era of them remarkable. Other nations, and many individuals at home, had confidently predicted the total failure of the American experiment. The working of the old Confederation; the loose rein it necessarily held on the rival prejudices, interests and factions of different States; the growing disposition to spurn wholesome restraint, and at the same time to dictate, exact, and control,—with perhaps many other exhibitions of unbridled human nature,—all led the enemies of American liberty to hope, and its friends to fear, that anarchy, dismemberment, and despotism, would in a short time exhibit its final catastrophe.

2. The world had never seen such a spectacle before. Other constitutions had been the slow growth of ages. They had, by little and little, resulted from the tumults of revolution, war, and the exactions of

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What remark on the labors of the Convention? What had been confidently predicted? What did the enemies of American liberty hope, and its friends fear? What occasioned these hopes and fears?

Did such a Convention, on such an occasion, ever assemble before? How had other Constitutions been formed? From what had they resulted?

powerful combinations, and been enforced on the minority by the fear, or the actual presence, of military power. But here a peaceful Convention, in a time of peace, assembled in obedience to the popular will, to form all at once the Constitution by which they were to be governed.

3. The vast extent of the territory, all equally affected by the doings of the Convention, is also to be noted in this connection. Other constitutional governments, even the best, have made a distinction between the *home government*, and that of their *colonies* and *dependencies*. The territory has been comparatively small which has enjoyed the full rights of citizens, while the great majority, both of people and territory, has held but a secondary place in the provisions of the Constitution. The Roman empire was an ancient example; and in modern times the British and French empires show the same distinction. But here is a Constitution intended equally to affect the people from Maine to Georgia, and from the Atlantic to the Mississippi, with provision for an indefinite increase of territory.

4. And, finally, the number of seperate States, and their widely different local interests,—some being maritime, others inland; some producing cotton, others sugar; some tobacco, others breadstuff; some beef, pork, and wool, others fish and manufactures; some depending on agriculture, and others upon trade,—the number of States, and the multitude of separate and often conflicting interests to be provided for, rendered the labors of the Convention intensely interesting, and

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What difference did the present case exhibit?

What is said of the extent of territory? What distinction have other governments made? How does that distinction operate? What examples, ancient and modern?

How far did the United States' territory extend in 1787? How far does it extend now?

What other circumstances rendered the labors of the Convention interesting?

the era of their performance remarkable. On all these accounts, and many others that might be named, it seems proper to approach the consideration of the United States' Constitution, and the labors of those who framed it, with feelings of peculiar interest. Such feelings are demanded by the gravity of the subject also, in view of the fact that the Constitution is the charter of our liberties; that under its protection we live; and that our dearest interests in this world are safe only so long as that instrument is preserved inviolate.

5. It required but a short experience to demonstrate that the old Confederation did not provide for the exigencies of the Union. Still it was hoped that when the existing topics of war were past, and the employments of peace alone should engross the attention of the people, it would be found better to answer the purposes of its formation. But this was an erroneous calculation. The war was a strong bond of union; and when this ceased to operate, the jealousies, rivalries, and sectional interests of the people began more plainly to appear, and to threaten both the General and State governments with faction, dissolution, and anarchy. The nation was without revenue; of course its treasury was empty, and no way appeared of discharging the sacred debt incurred by the war of the revolution. Insurrection against the State governments was threatened, and actually occurred in Massachusetts, and was with difficulty suppressed. All these, and other evils still, arose from the fact that

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With what feelings should we approach the consideration of the United States' Constitution? By what else are such feelings demanded?

What did a short experience demonstrate? What was still hoped? Did the event justify the hope?

What was the war to the Union? What happened when it ceased to operate?

What was the condition of the nation with regard to revenue, etc.?

What is said of insurrection?

Congress had no power to regulate trade, to raise a revenue from commerce, or to command the militia of the States; and especially that they could make no requisitions on the States, but merely recommend to them the course they thought best, and then wait the slow process of obtaining their consent, which was often never given at all, and rarely, if ever, more than in part. Still, with all these glaring inadequacies before them, it took a considerable experience to teach the people generally that a change was indispensable. Though the idea of a general Convention for improving the Articles of Confederation had been discussed both publicly and privately, before and after the close of the war, and both in and out of Congress, it was not till the year 1786 that any thing like an important incipient step was taken toward such a result. On the 21st of January, in that year, the Virginia legislature passed a resolution proposing and inviting a meeting of deputies from all the States, and appointing for their deputies Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, and Meriwether Smith, Esquires. But by the express terms of the resolution, the powers of the deputies extended only to the consideration of trade, both of the Union and of the several States. They were also to report to the several States an act, which, when ratified by them, would enable Congress to regulate and provide for the commerce of the Union.

6. This resolution was passed partly in the hope that it might lead to something more to the purpose,

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From what did these evils arise? What only could Congress do? For what must they wait?

Was the consent of the States always obtained, even in this way?

Did the people immediately learn what was necessary?

In what year was an important step taken?

What resolution was passed by the Virginia legislature? How far did the powers of their deputies extend? What were they to report to the States?

What motives led to the passage of this resolution?

and partly as the only alternative to doing nothing on the subject. It however happened favorably at the then present time that a move had been made toward a uniformity in trade between Virginia and Maryland, by Commissioners appointed to settle the jurisdiction on the waters between the two States. This discussion suggested the necessity that neighboring States should unite with them.

7. The time and place of meeting was left to the Virginia deputies. They determined on the first Monday of the following September, and in order to seem not to be under the influence of Congress, they chose as the place the city of Annapolis in Maryland.

8. Notwithstanding the proposed meeting was favorably viewed, as a general thing, only five States were represented in it. These were Virginia, Deleware, Pennsylvania, New Jersey, and New York.

9. The small attendance seemed to the deputies present to be a sufficient reason why they should not attempt any action on matters of such magnitude as those intrusted to them, and which concerned other States equally with those represented. Besides, in order to have their labors of any avail to their constituents, the concurrence of other States, at least a large majority of the whole, was indispensable. It was seen too, by those convened, that their commission was not sufficiently extensive; and that, instead of being confined to the subject of trade, or a revenue from commerce, the Convention ought to be empowered to act with reference to all the wants of the Union. Indeed, the instructions to the deputation from New Jersey extended to all such purposes. Under these circum-

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What happened favorably? What did this discussion suggest?

What time and place of meeting was fixed by the Virginia deputies?

How many, and what States, were represented? How did the small attendance seem to the deputies present? What was necessary in order that their labors should be of any avail?

What else was seen by those convened? How should they have been empowered to act?

stances, the Convention adjourned without action on the matter of their instructions; but they presented a very able and excellent report to the legislatures of their several States, explaining the cause why they declined action for the present; presenting some very convincing views respecting the wants of the Union; and recommending a Convention from all the States, with power to act with reference to all the wants of the nation. This they proposed should meet at Philadelphia on the second Monday of the following May, and they took the liberty to transmit copies of their report to Congress and to the Executives of all the States. This report was drawn by Col. Hamilton, and was so favorably received in Virginia that an act, drawn by Mr. Madison, was soon passed, almost unanimously, in her legislature, complying with its suggestions, and appointing seven delegates, at the head of whom was George Washington. This act they forwarded to the Executives of each of the States of the Union. It was very favorably received, and its impression coincided with the direction in which experience had been leading the public mind; especially since the Convention at Annopolis. The Convention at Annapolis was something new, and of course exciting. Together with the example of Virginia, it produced such an effect that appointments of Commissioners were soon made by all the States, except Rhode Island. That State, by her position, and the position of her ports, enjoyed some commercial advantages which she feared she might lose by the desired reform, and she therefore re-

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What did the Convention do? What report did they present, and to whom? Where did they propose that a new Convention should meet, and when?

To whom did they transmit copies of their report?

How was this report received in Virginia? What act was passed?

How was it received by other States? With what did its impression coincide?

What effect did the Convention at Annapolis and the example of Virginia produce? What exception? What were her reasons?

mained unrepresented in the Convention at Philadelphia. With regard to all others, their experience was aided by the expected Conventions, the canvassing of the subject, the appointment of commissioners, and their actual assembling, so that while the Convention at Annapolis was in prospect, and in the interval between that and the one at Philadelphia, the public mind became ready for a reform which would give more vigor and stability to the General Government, even should it have to be purchased by the surrender of a portion of individual or State rights.

10. Some of the things that went to make up the public mind, ought to be understood, in order to appreciate the labors of the Federal Convention, or to study the Constitution, which was the result of their deliberations. Among these was the public debt, which, while all felt the obligation to discharge it, no one knew how to pay. The most strenuous efforts of Congress only showed its inability to procure from the States the means of payment. Either from the avarice, the dilatoriness, the poverty, or the mutual jealousies of the States, they would not exert themselves to meet so sacred a demand, unless they saw the arm of law clothed with power to collect it. From these, and many similar causes, the public mind was filled with dark and gloomy forebodings. Many at home, and many more abroad, especially in Great Britain, speculated on the downfall and dissolution of the Union, which indeed seemed inevitable from the scarcity of money, the destitution of revenue, and the want of protection to com-

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How had the public mind in all other States become ready for reform?

What things ought here to be understood, and why? What was among these?

What did the efforts of Congress show?

Why would not the States help to pay the public debt?

How was the public mind affected?

How did many at home and abroad speculate? Why did this seem inevitable?

merce, which thus far marked the American experiment. Other nations pursued a monopolizing policy, in which Great Britain took the lead, by which the trade with them was carried on in their vessels, to the exclusion of American, while in their tariffs injurious distinctions were made in favor of their produce and manufactures. The effect of these regulations Congress could not prevent or modify, for want of authority to regulate commerce; hence American merchants were forced to submit to a system which robbed them of their means of profit, and the American people could not prevent the filling of foreign coffers and foreign treasuries with the fruits of their labors. Many of the States attempted to meet these foreign measures by regulations of their own; but not being uniform in their attempts, they only diverted trade into other ports, or irritated and perplexed each other. Treaties were broken by separate States, which acted on the principle that they were not bound by the acts of Congress; of course the Federal authority was equally destitute of respect abroad and of credit at home.

11. The various views of the people respecting the best form of government appeared in the different actions which they pursued, and the different hopes which they avowedly entertained. Many were inclined to monarchy, or at least were partial to the elements of great strength which monarchical governments placed in their executive departments. Such persons watched the approach of the crisis, which they could

What did other nations do? Who took the lead? What was the result?

Why could not Congress prevent these effects?

To what were American merchants forced to submit?

What could not the American people prevent?

What did many States attempt? Why did they fail?

How were treaties broken? What was the result to the Federal authority?

What various views had the people, and how did these views appear? To what were many inclined?

not but think was near, in the hope that experience would teach the people generally the correctness of their views, and bring them to adopt from choice the principles which they thought essential to a permanent government. On the other hand, republicans became alarmed at what they could not but see and acknowledge, and felt that something must be done, and that very soon, in order to prevent the blasting of their fondest hopes, and the failure of the great American experiment. They wished to have a strong government, but were partial to the sovereignty of the States. They wished to have the authority of Congress extended over the States, but were opposed to a consolidation which would merge the State governments in that of the nation. Others again wished to see the Union divided into several confederations, according as their leading employments or their staple products might indicate; and which, though they should unite for common defence, should yet, in the matter of a revenue from imposts, treat each other as foreigners. These, and numerous other things, which can be fully learned only by a study of the early history of our country, are necessary to be understood in order to a profitable study of the Constitution. They show the circumstances under which the Convention of 1787 met, and are the best light on the character and ability of that Convention.

12. On the arrival of the day proposed by the Convention at Annapolis, i. e. the second Monday, which was the 14th, of May, 1787, it appeared that a majority of the States were not yet represented. Seven States were the least that could constitute a

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With what hope did they watch the approaching crisis?
At what were republicans alarmed? What did they feel? To what were they partial? To what were they opposed?
What did others wish to see?
On what day and year did the Convention meet at Philadelphia?

majority, and that number was not convened till the 25th.

13. And here it may be as well as any where to state the principle on which votes were given, and majorities constituted, in the Convention. The Convention voted *by States*,—i. e. the members from each State voted by themselves, and the result, whether *yea* or *nay*, was put in, or accounted, as the vote of the *State*. Hence in the decision of any matter, no greater number of votes could be given than the number of States represented; neither did the number of delegates from any State make any difference in the weight of that State in procuring any result, or carrying any measure. Thus the State of Pennsylvania, with eight delegates, could put in but one vote, while New York, with but one or two, could do the same. This had been the rule, thus far, under the Confederation; and the small States, especially Delaware, instructed their delegates to insist on the same rule in the Convention. The larger States yielded the point in order to avoid dissensions with the small States, which might be fatal to the object they all had in view. In making this accommodation, the great State of Virginia, with a commendable devotion to the public good, took the lead.

14. On the 25th of May, as we have seen, a majority of the States were convened. Delegates from nine States were present, namely, from Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia. George Washington was unanimously elected President of the Convention, and William Jackson was chosen Secretary. The first business was to adopt

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How long was it before a majority of its States were represented?
Explain the manner of voting. Why did the large States yield to the small ones in this matter?
How many States were represented on the 25th of May?
Who were chosen President and Secretary of the Convention?

a code of parliamentary rules for the direction of the Convention in the performance of the business before them. The main business of the Convention was then opened. As the Convention had been originated by Virginia, it devolved on Mr. Randolph, from that State, to open the subject on which they had been drawn together. The most important topic in his introductory remarks was the character of the government which it should be their aim to establish. This, he said, should be such as to secure the people, "first, against foreign invasion; secondly, against dissensions between members of the Union, or seditions in particular States; thirdly, to procure to the several States various blessings of which an isolated situation was incapable; fourthly, it should be able to defend itself against encroachments; and fifthly, it should be paramount to the State Constitutions."

15. The student will easily perceive, that in all this Mr. Randolph was quite correct; indeed, there could hardly be a difference of opinion in the Convention with regard to these principles, though the subsequent debates showed that they were much divided about the way in which these ends could best be attained.

16. After commenting on the defects of the Confederation, which we have already considered, and on the danger of the then present state of affairs, Mr. Randolph proceeded to lay before the Convention, in the shape of a series of resolutions, the outline of a Constitution, such as he supposed was called for by the necessities of the nation. To this we shall advert, along with other opinions and plans, as the several

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Who opened the business of the Convention? What did he say of the government which they should aim to establish?
What is the meaning of the word *paramount*?
Was Mr. Randolph correct?
What did the subsequent debates show?
What did Mr. R. lay before the Convention?

topics which it suggests arise. As this plan of Mr. Randolph was first proposed to the Convention, it was naturally the first to be acted on, the basis of subsequent deliberation, and that which especially elicited and drew forth the opinions of the members. Other plans were proposed, as that of Charles Pinckney of South Carolina, William Patterson of New Jersey, and Alexander Hamilton of New York. Mr. Patterson's plan was, like Mr. Randolph's, in the form of resolutions,—the others were arranged into heads called Articles.

Who else proposed plans of a Constitution?

PART IV.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

There could, of course, be little or no diversity of opinion on the sentiments here expressed. All saw that these were the things that needed to be done. But there were differences of opinion about how far it was necessary to depart from, or go beyond, the Articles of Confederation. This disagreement brought out some statements of the difference between a merely *Federal* and a properly *National* compact. The former could not create any supreme power; but left the States in possession of so much sovereignty that no one could be compelled to any measure by any or all the rest. The

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Who ordained and established the Constitution? How does it appear to be the act of the people? What were the objects contemplated? Did the Convention agree in the sentiments of the preamble? In what did they disagree?

What is the difference between a *federal* and *national* compact?

latter could, and would, furnish supreme legislative and executive power, by which the people of all the States would be bound. It was the evils of the merely Federal union that had called together the Convention. The difference of opinion seemed to be, that while some thought a mere revision and amendment of the Articles of Confederation would be sufficient, others thought they must be entirely set aside, and the union established on an entirely new and different basis.

Mr. Randolph's first resolution was in these words: "Resolved, That the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution, namely, 'common defence, security of liberty, and general welfare.'" Mr. Patterson's first resolution was as follows: "Resolved, That the Articles of Confederation ought to be so revised, corrected, and enlarged, as to render the Federal Constitution adequate to the exigencies of government and the preservation of the Union." In the course of the discussion, other resolutions were offered, designed to elicit the views of the members on the question of substituting a government, which should have a *compulsive* operation,—by acting, not on the *States* directly, but on the *people*—the individual inhabitants—in the place of a mere compact between sovereign States, where the good faith of the parties was all the bond which held them together. The result was the adoption of the following resolution:—"That a national government ought to be established, consisting of a supreme Legislative, Executive, and Judiciary." This resolution made it apparent that in the view of the Convention, a mere revision of the Articles of Confederation was insufficient, and that something radically different was called for. Mr. Patterson's plan was subsequently proposed, and even after the first action on Mr. Randolph's resolutions, as one more endeavor to make an amendment of the old Articles answer the purpose. He and some others thought that the es-

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Was the *federal* character of the union set aside by the adoption of the Constitution? It was not.

What evils had called together the Convention?

State the difference of opinion that appeared in the Convention.

What was Mr. Randolph's first resolution? Mr. Patterson's? What other resolutions were offered?

On whom does a compulsive government act directly?

What is the bond of union between States united in a mere compact? [i. e. what is there to keep them from permanently breaking their compact?]

What resolution was passed while the Convention were engaged with these questions? What appeared from this resolution?

What was Mr. Patterson's object in proposing his plan? What did he and others fear?

Article I.

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

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tablishment of a government with supreme power would encroach too much on State sovereignty, or perhaps annihilate the State governments altogether.

Art. 1. Sec. 1. This agrees in substance with the plans of Messrs. Pinckney and Hamilton. Mr. Pinckney proposed to call the popular branch of the legislature "the House of Delegates," and Mr. Hamilton proposed to call it "the Assembly." Mr. Patterson's plan was to preserve the old Articles of Confederation, which provided for a Congress consisting of only a single body. Doct. Franklin was also partial to the plan of vesting all legislative power in a single body. But so general was the impression in favor of two branches, that this section excited no remarkable discussion.

The plan of having two branches in the legislature of a State is an improvement on the practice of ancient nations. It is true that the republics of Greece and Rome arrived at great strength and empire, the latter did especially, with single legislative bodies, except so far as the assemblies of the people were such. But it is also true that the check which one legislative body holds over another, where two exist, has a remarkable influence in rendering both cautious, and in preventing hasty, rash, and immature legislation. Great Britain and France, the two governments most worthy of note in Europe, have legislatures constructed in this way. In

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Repeat Sec. 1. What are *legislative powers?*

With whose plans does this section agree in substance?

By what names did they propose to call the two branches of the legislature?

Did Congress under the Confederation consist of two branches or a single body?

What was Mr. Patterson's plan in this respect? What were the views of Dr. Franklin?

What is said of the plan of having two branches? What of the republics of Greece and Rome? And of the check which one legislative body holds over another? What of Great Britain and France?

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

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Great Britain the popular branch is called "the House of Commons,"—the other is "the House of Lords." In France the corresponding branches are called "the Chamber of Deputies," and "the Chamber of Peers."

SEC. 2. That part of this Section which fixes the term of service of Representatives, their age, and other qualifications, as well as the qualifications of electors of Representatives, produced no remarkable discussion. Some proposed three years as their term of service; and others thought they should be chosen by the State Legislatures instead of the people. On all these matters, the plans of Messrs. Randolph and Pinckney were in substance adopted, as was that of Mr. Hamilton, except that he would have had the first Representatives and the first Senators chosen by the conventions called in each State to ratify the Constitution. Mr. Patterson's plan, of course, left these matters as already provided for by the Articles of Confederation. Those who thought that the Representatives should be chosen by the State Legislatures, contended that the people, directly, should have as little to do

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What are the two branches called in Great Britain? And in France?

How often are members of the House of Representatives chosen? By whom are they chosen?

What is meant by an elector? What are the qualifications of electors?

What is the most numerous branch in the Legislature of this State called?

What age is required for a Representative? What other qualifications must he have?

What other term of service was proposed? And method of choice?

Whose plans were substantially followed?

What is said of Messrs. Hamilton and Patterson?

What arguments for Representatives being chosen by State Legislatures?

Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual

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with the government as possible. They are generally uninformed, it was urged, and therefore liable to be misled. The greatest evils felt by the States, or by the nation, it was thought, flowed from an excess of democracy. On the other hand, it was urged that the House of Representatives should be drawn directly from the people. That body ought to sympathize with the people, and be the special organ of the voice of the people. The democratic principle could not be sufficiently preserved in the government, unless the Representatives were drawn, not only from the people, but from the different districts and sections of the whole republic.

The Constitution leaves the qualifications of electors to the several States, which must meet the wishes of all, however different their practices may be. Indeed the qualifications of both electors and Representatives must remain undetermined by any other rules than such as are suggested by the habits, interests, and peculiarities, of different states and nations. It seemed proper only to provide against the admission of aliens and foreigners. A member of the French Chamber of Deputies must be thirty years of age, and pay a direct tax of 500 francs. An elector must pay a direct tax of 200 francs.

But that clause of this Section which apportions the Representatives and direct taxes among the States, occupied much of the time of the Convention. So far as regards representa-

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What did those who advanced them think of the people?

From what source did they think the greatest evils in the nation flowed?

What were the arguments for a choice by the people?

Can any general rule be given, suited to all times and nations, for the qualifications of electors and Representatives? What circumstances will direct these matters in different states and nations?

What qualifications must a member of the French Chamber of Deputies have? And an elector?

How are Representatives and direct taxes apportioned?

Who are meant by "other persons"? Why did they not say *slaves*?

enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such

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tion, they easily agreed, notwithstanding strenuous opposition from the small States, to depart from the old rule under the Confederation, and resolved that an equitable apportionment should be made. Some proposed the property of the States, and others the revenue derived from them to the government, as the basis of the apportionment. Against both these plans there seemed to be very grave objections. They seemed to provide for the representation of *wealth*, rather than *persons;* and seemed not to have a proper regard to, and connection with, the rights and liberties of the whole people. Neither of them could give any adequate idea of the relative extent or population of the States. The richest States might be by no means the most populous; and as the greatest importing States would probably bring in the most revenue, on that basis the States of New Hampshire, New Jersey, many larger States at the South, and even perhaps the great State of Virginia, might be inferior on the floor of Congress to the little State of Rhode Island. On the whole, it soon became evident that *population*, of some description, must be the basis of representation. Mr. Randolph's plan proposed either the "quotas of contribution," or the number of "free inhabitants." Mr Hamilton favored the rule finally adopted. This rule was contended for by Southern members generally, under the idea that slavery was very important to their interests, and that the slaves were an important part of their population.

Many of the members expressed themselves in the most decided manner in opposition to slavery. It was not their wish to take the matter out of the hands of the particular States where slavery existed; but they were extremely anxious that the government about to be established should not show any favor to so iniquitous a system. And they were especially alarmed at what seemed to them an attempt to foster and protect slavery at the expense of the free laborers

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What other bases of representation were proposed? What were the objections to them?

What difference between Mr. Randolph's and Mr. Hamilton's plans?

Why did Southern members contend for bringing their slaves into the representation?

Did any speak decidedly against slavery?

Did they wish to take the matter out of the hands of the slave-states?

What were they anxious for? What alarmed them?

How often must a census, or enumeration of the people, take place?

manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand; but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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of the North. It being determined that property could not be the rule of representation, Mr. Gerry asked, 'Why then should the blacks, who are property at the South, be in the rule of representation more than the cattle and horses of the North?' And Mr. King alluded to the same thing as "a most grating circumstance" to his mind. But Mr. Governeur Morris alluded to it in terms of almost unmeasured disapprobation. He called domestic slavery a nefarious institution, and the curse of Heaven on the States where it prevailed. "Compare," said he, "the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other States having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States, and enter New York, the effects of the institution become visible. Passing through the Jerseys, and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take, through the great regions of slaves, presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are

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What does the Constitution determine respecting the number of representatives?

What was Mr. Gerry's question with regard to the slaves' coming into the representation? Mr. King's remark?

How did Mr. G. Morris allude to the same matter? What did he call domestic slavery? What comparison did he institute? How did he think the territory of the North and South compared?

they men? Then make them citizens, and let them vote. Are they property? Why then is no other property included? The houses in this city [Philadelphia] are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this, that the inhabitant of Georgia and South Carolina, who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind, than a citizen of Pennsylvania or New Jersey, who views with a laudable horror so nefarious a practice. Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of aristocracy. And what is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defence of the Southern States, for their defence against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The Legislature will have indefinite power to tax them by excises and duties on imports; both of which will fall heavier on them than on the Southern inhabitants; for the Bohea tea used by a Northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence, and the rag that covers his nakedness. On the other side, the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defence; nay, they are to be encouraged to it by an assurance of having their votes in the National Government increased in proportion; and are at the same time to have their exports and their slaves exempt from all contributions for the public service." These remarks were made while as yet no provision was made giving Congress the power to prohibit the importation of slaves, or even discourage it by imposing a duty on them. Indeed, in the draft then before the Convention was a clause expressly restraining Congress from meddling with the matter, either by

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What did he say, if slaves are men? And what, if they are property? What, of the houses of Philadelphia? What did he say the admission of slaves into the representation comes to?

Give some farther points of Mr. Morris's remarks. What do you think of his sentiments?

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

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

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prohibition or duty. The basis of representation was finally settled, it would seem, rather because the Southern members manifested a steady determination to bring their slaves into it, than because they offered, or attempted to offer, any convincing arguments in favor of the plan. The Northern members were exceedingly anxious that the Convention should agree, and for that purpose were disposed to make large concessions. The Southern members, too, urged that the apportionment of direct taxes by the same rule, and the giving of the power to regulate commerce to a bare majority in Congress, were concessions on their part especially favorable to the North. The proportion of three fifths induced no great discussion. The substance of the clause was borrowed from a resolve of the continental Congress, passed April 18, 1783, recommending that the Articles of Confederation should be so amended that the National Treasury should be supplied by contributions from the several States in proportion to the whole number of free inhabitants, including those bound to service for a term of years, and three fifths of all other persons, except Indians not paying taxes.

The provision for filling vacancies is of obvious expediency. A Representative so chosen would serve only for the unexpired term of the one whose seat had become vacant.

Impeachment is a prosecution for maladministration, or corrupt conduct in office. There is an evident propriety that the prosecuting party should never constitute the tribunal that is to judge and give sentence. Such a prosecution be-

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Why was the basis finally settled as it was?

What concessions did the Southern members suppose they were making in favor of the North?

Where did they obtain the substance of the clause, and the proportion, *three fifths?*

How are vacancies to be filled when they happen in the House of Representatives?

What do you understand by a *writ of election?* How long would a member so chosen serve?

What is meant by the *Speaker* of the House?

What is impeachment? What is the power of impeachment?

ing in behalf of the people, their Representatives are properly intrusted with it; while, as a guard to public men against wanton or causeless prosecution, also against unfair and interested adjudication, the power to try all such cases, as appears in the next Section, was given, not to the House, but to the Senate.

The number of which a legislative body ought to consist, is a matter on which nations and confederations have differed exceedingly. We see from the apportionment of members of the first Congress, and from subsequent practice, what views prevailed on that subject in the Convention, and have since prevailed in the nation. We see also throughout a strenuous aim at a fairly proportional representation.

Among ancient nations, we may notice the Athenian Senate, which consisted of 500 Senators. These were chosen annually by lot from the different tribes. But the assemblies of the people were also legislative bodies, and as such, were remarkable for their numbers. An assembly of the people could not legally consist of less than 6,000 citizens. Indeed these assemblies were more properly legislative than the Senate was. There were comparatively few matters on which the Senate could act definitely and finally. Their business was rather to debate the matters to be brought before the people. All proposals intended to come before the people must first come before the Senate, and nothing could be submitted to the people which the Senate judged to be unconstitutional, or for any reason improper. In this view the Senate of Athens bore some resemblance to the first branch of modern legislatures, with the right of originating all acts; while the assemblies of the people occupied the place of the second. The relative duties of the Senate and popular assemblies of Sparta were much the same as of those of Athens; and the governments of these two States, which were much the most important States of Greece, give a general idea of those of the smaller States. The Spartan Senate,

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What makes it proper that the House should have this power? Why should they not also try impeachments?

How have nations practised in regard to the numbers of their legislative bodies?

How numerous was the Athenian Senate? And the assemblies of the people? Were these assemblies legislative bodies? What was the main business of the Senate? What power had the Senate with regard to matters to be brought before the people? What resemblance in the Athenian Senate?

What is said of the Senate and Assemblies of Sparta?

What general idea do we get from the governments of Athens and Sparta?

however, consisted of only twenty-eight members, and the numbers of their popular assemblies seem not to have been prescribed by law. The Senate was what the word signifies, a body of old men. The required age was sixty years, and they were chosen for life. We may also notice the Amphictyonic Council, which was the body that presided over the affairs of confederated Greece. The greatest number of States so confederated was twelve, and the number of deputies was two from each State.

The Roman Senate consisted at first of 100 old men. Afterward, and for some centuries, its number was 300. In the time of Julius Cæsar its number reached 900. They were chosen at first by the kings, and afterward by the Consuls and Censors. Their power was very great, but, as in the case of the Grecian Senates, there was much to be acted on in the assemblies of the people. Besides, there were many officers of state chosen by the people, though they did not choose their Senators.

In modern history, the German Diet is an example of a small legislative body. It consists of but seventeen members. An apportionment is aimed at, by giving the large States one member each, and uniting two or more small States, or free cities, in their representation, by a single member. But when we turn to France, we find the Chamber of Deputies, the popular branch of the French legislature, consisting of 459 members. These are chosen by as many electoral colleges, in the formation of which a fair representation was aimed at. The British Parliament, however, affords the most remarkable modern example of a numerous legislative assembly. And this body, numerous as it is, seems to be on the increase, owing to the power of the king to form new corporations with the right to be represented in Parliament. In Dr. Paley's time, who wrote upwards of sixty years ago, the House of Commons consisted of 548

How many members were in the Spartan Senate? What was the required age? For how long were they chosen?

What was the Amphictyonic Council?

What was the greatest number of confederated Grecian States? How many deputies from a State?

What were the different numbers of the Roman Senate? How were they chosen at different times? Had popular assemblies any part to act?

How many are the members of the German Diet? How is an apportionment aimed at?

What is the number of the French Chamber of Deputies?

Is the British Parliament a numerous body? Is its number stationary? What power of the king affects its number? How many members in the House of Commons sixty years ago?

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

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members. But within these twenty years it has been stated at 658. The irregularity of popular representation is also remarkable. Property enters largely into the qualifications of electors, so that the proprietors of great estates enjoy a representation in Parliament which no others can. And even this rule does not apply equally in all cases; but, in a manner the most arbitrary, one county or town has a vastly greater representation than another, without any regard to extent, wealth, or population. Dr. Paley states as fact, that 200 representatives are chosen by no more than 7,000 constituents; and even that the present structure of the British Constitution admits the possibility that a single voter may appoint two representatives. And farther, that there are portions of the kingdom not represented at all. These flagrant incongruities are the result, doubtless, of a long series of causes, which have been in operation ever since the government was established; such as Acts of Parliament, Corporations, and the royal prerogative. We will only add here that the universities of Oxford and Cambridge, and the university of Dublin, are represented in Parliament.

SEC. 3. Mr. Randolph, in his plan, gave no intimation whether the States should, or should not, be equally represented in the Senate. The plans of Messrs. Pinckney and Hamilton both provided expressly for different numbers of Senators from different States. Mr. Hamilton's plan also was that Senators should be chosen to serve during good behavior. The other plans would have limited their term of service, making it so long, however, as in a good measure to secure their independence. Again, Mr. Randolph proposed that the Senators should be chosen by the House of Representatives, out of a suitable number nominated by the State Legislatures; Mr. Pinckney's plan was the same, except that he

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How many within twenty years? Is the representation fairly apportioned? Who enjoy the greatest representation? Is this rule uniform?

What does Dr. Paley state? What are the causes of these irregularities?

Repeat the first clause of Sec. 3.

What were the several plans proposed?

proposed no nomination; while Mr. Hamilton would have had them chosen, as the President is, by electors chosen for that purpose by the people. Mr. Pinckney also proposed the division of the Senate into three classes, whose terms of service should expire in rotation. Motions were also made to have the Senate chosen directly by the people; and, finally, that the Senators should be appointed by the President, out of a suitable number to be nominated by the State Legislatures.

The numbers of which the Senate should consist, and the mode of their appointment, occasioned much and very able debate. The general opinion was that the Senate should be a much smaller body than the House; and that its efficiency, as a check to the rashness and precipitancy to which the House would be liable, depended much on its being a smaller body. It seemed necessary also to draw it from a different source; at least that the appointing power should be different. If, like the House, it should be appointed by the people, it would be like the House in its frailties, partialities, prejudices, and temptations; and so fail of being a balancing power. To allow the President to appoint it, would be a stride towards monarchy which few were prepared for. And to give the choice of the Senate to the House would, like its being chosen by the people, make it too much *like* the House to be a check upon it; and all these methods would diminish State sovereignty and importance too much. Many members had received instructions to maintain the equality of the States; and having been obliged to concede a proportional representation in the House, they were the more determined to maintain State dignity in the Senate. On the whole, it appeared that a representation of the *States*, as independent sovereignties, rather than of the *people* of the States, in the Senate, was what must be sought for; and this could best be obtained by devolving the choice of the Senators on the State

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What other motions were made?

Have you any opinion respecting the best manner in which the Senate might have been constructed?

What need was there of having a Senate at all?

What occasioned much and able debate?

What general opinion prevailed? What seemed necessary?

What objection to the Senate's being chosen by the people? By the President? And by the House?

What objection common to all these methods?

What instructions had many members received? What had they been obliged to concede? What were they the more determined on?

What did it seem, on the whole, must be sought for?

How did it appear that this could best be attained?

Legislatures. At the same time this course seemed to promise a body of more stability, gravity, experience, and wisdom, in proportion to its numbers, than the House could be expected to possess. Especially as these excellencies were farther sought by making the required age thirty years, and extending the term of service to six years. Another excellence of this plan is the difference of elements it introduces into the two branches of the Legislature. Without this, a single branch might be as good as two.

Some members of the Convention sought a property qualification for Senators. Having in view the British House of Lords, and the effectual manner in which antagonist influences are balanced between that and the House of Commons, they thought some approach toward English nobility desirable. Since some must be rich, and others poor, they thought the interests of these two classes should be separately embarked in the two Houses of Congress. Thus the pride and selfishness of the rich would be brought in direct collision with the envy and jealousy of the poor, which would make the two Houses an effectual check upon each other. Mr. G. Morris remarked that "if the second branch [the Senate] is to be dependent, we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; he hoped so. The rich will strive to establish their dominion, and enslave the rest. They always did. They always will. The proper security against them is to form them into a separate interest. The two forces will then control each other."

But perhaps as hard a question to decide as any other, was how the States should be represented in the Senate. The small States were determined on an equal representation, *somewhere*, with the large ones; and as that was given up in the House, it must be maintained, if at all, in the Senate. On the other hand, the large States could see no propriety in their being reduced to an equality with States of one twentieth of their size. At the same time, they saw that it was asking too much of the small States to say that they should

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What did this course promise?
How were these excellencies farther sought?
What other excellence? What remark concerning it?
What qualification was sought by some, for Senators?
What body had they in view? Give some of their arguments.
How did Mr. G. Morris talk? How do you like his views?
What hard question had the Convention to decide?
What were the small States determined on? What had created the necessity to maintain it in the Senate?
How were the large States affected?

put themselves so entirely in the power of the large ones as they would be by a perfectly proportional representation in both Houses. In this view, the large States would perhaps have easily made some concessions, and yielded a *part* of the superiority to which their extent, population, and wealth, entitled them, if thus they could have been allowed to retain the rest. But the small States considered so much at stake that they could make no farther compromise; so that the large States, after much deliberation, rather than see a division of the Union, and a total failure of their most elaborate endeavors, consented to the present enormous disproportion in their representation in the Senate.

It is plain that the structure of the two Houses of Congress is the result of a compromise between the States. On the question of their perfect equality in the National Legislature, they were so nearly balanced that an agreement without a compromise was utterly hopeless. And experience has pretty well satisfied all parties of the wisdom of the plan finally adopted.

It was while deliberating on the manner of voting in Congress, whether it should be by States, as under the Confederation, or according to some equitable ratio of representation, that Dr. Franklin, after some appropriate remarks on their peculiar difficulties and anxieties; on the practice of daily prayers in that hall in the beginning of the contest with Great Britain; and on their dependence on divine illumination for success in their then present undertaking; stating also his own firm belief that God governs in the affairs of men; motioned that "prayers, imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service." It was seconded by Mr. Sherman;

What compromise might they have easily made?

How did the small States consider the matter?

What did the large States at length consent to?

What appears with regard to the structure of the two Houses?

On what question, and how, were the States balanced? What did that fact make necessary? What has experience done?

What do you think of the course finally adopted? Are there any objections to it?

Could you propose a plan that would avoid all objections? Or have fewer objections against it than the one adopted?

On what occasion did Dr. Franklin make a motion for prayers? What did he first remark on? What did he state as his own belief?

State his motion. What do you think of such a motion on that occasion? Who seconded it?

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

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but strange as it may seem, neither the venerable age, and important services, of the mover, nor any of the great considerations by which the motion was commended to the attention of every deliberative *Christian* assembly, could keep the Convention from adjourning without even taking a vote upon it.

The classification of the Senators, and their going biennially out of office, was for the obvious purpose of having a majority of the Senate present, at every session, who had been in office long enough to enjoy the advantages of experience and an acquaintance with the duties of their station. It is also a guard against any improper combination among the Senators, by the biennial appeal made to a portion of the people through the State Legislatures.

When vacancies happen, the Executive authority, i. e the Governor of the State whose Senator has left his seat empty, appoints one to take his place until the next meeting of the State Legislature. When the Legislature meets, this temporary appointment ends, and they elect a Senator to the vacant seat. But he is not elected for six years, but merely for the unexpired part of the six years for which the Senator was elected who has vacated his seat.

What did the Convention do with it? What do you think of their course?

How are the Senate classified? What objects are aimed at in this arrangement?

What if the seat of a Senator becomes vacant by resignation or otherwise?

How long does the Executive, in such case, appoint a Senator for? How long the Legislature at their next meeting?

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

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

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

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

The necessity of providing for the death or removal of the President was the occasion of the creation of the office of Vice-President; and he is made president of the Senate, because such an officer is, as a matter of course, necessary; because it is a station of some importance and responsibility; and because that otherwise he would have no duty at all corresponding with the importance of his office. These reasons also make it proper that he should have a casting vote when the Senate are equally divided.

What is the required age for Senators? What citizenship is required?

To what office is the Vice-President appointed? When only can he vote?

Why was such an office created as that of Vice President? What were the reasons for making him president of the Senate? And for giving him a casting vote?

What sole power is given to the Senate?

What difference do you see between *oath* and *affirmation?*

Who shall preside when the President of the United States is tried? Define *preside.*

Do you think of any reason why the Vice President should not preside in such a trial?

What is the meaning of *convicted?* of *concurrence?*

The power of trying impeachments is given to the Senate, rather than the Judiciary, because the latter would be too small a body; because some had fears that the Judiciary might be influenced by Congress, as in that case it was contemplated that Congress should appoint the Judges; because they might be also influenced by the President, who should nominate them; and because the Supreme Court will be the body to try the President according to law, after his impeachment.

The formation of a tribunal proper for trying impeachments was rightly considered by the Convention as a very important and difficult part of their trust. It was accordingly, after many different proposals, much anxious debate, and many careful siftings of the whole subject, that they fixed on the Senate as this tribunal. So far as they could refer to examples, they had before them some of the best State constitutions, and, in some measure, the example of Great Britain.

The plan, however, met with strong objections. An objection, as plausible as any, was that it confounds the legislative and judiciary authorities in the same body, contrary to the approved rule which requires them to be kept separate. This objection is one of that kind, however, which becomes the less, the more closely it is examined. For it is to be noted, that though the same body acts in different capacities, the capacities themselves, and the functions exercised in them, are kept separate. When the Senate sits as a court of impeachment, it lays aside entirely its legislative character. The utmost that can be said, is that the same body of men is constituted, in one capacity, a legislative body, and in another, a court for the trial of impeachments. If it be admitted that this is an intermixture, in some degree, of two branches of the government, the plea still remains that the provision is salutary and useful. If this be proved, the plan is justified. That it is so, appears from several considerations. The offences, which impeachment is designed to reach, are quite different from those usually within the juris-

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What reasons for giving this power to the *Senate,* rather than the *Judiciary?* Do you think these reasons are good?

How was the formation of a tribunal to try impeachments considered by the Convention? Did they decide it hastily? What examples had they to guide them?

What objection was made to this plan? What remark concerning it?

What is to be noted? How does this appear?

What is the utmost that can be said? What if we admit that there is an intermixture? How does it appear that this plea is a valid one?

What of offences?

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

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diction of courts. The Senate will almost necessarily better understand the nature of offences which require impeachment, and the rules that apply to them, than the judges can. And as these offences are sometimes such as violate no written statute or legal precedent, so, in judging of them, a wider range of discretion is allowed than in judging of infractions of either written or common law. This discretion the Senate will be better prepared to exercise than almost any other persons, from their greater experience, and more intimate acquaintance with the difficulties and embarrassments of persons in official stations, and their liabilities, with the best intentions, to fall into occasional errors. We will only notice farther, the guarded manner in which this power is given to the Senate, by the requirement of a prosecution from the House, and the concurrence of two thirds for a conviction.

By comparing the last clause of this Section with Art. 2, Sec. 4, it would seem to follow that the Senate, on conviction, were bound, in all cases, to enter a judgment of removal from office, though it has a discretion, as to inflicting the punishment of disqualification.

Among modern governments, having one legislative branch in any way analogous to the United States' Senate, the most remarkable are those of France and Great Britain. The French Chamber of Peers was formerly in the enjoyment of hereditary possession of their office; but hereditary rights of

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What of the Senate's knowledge of offences?

Why is a wider range of discretion allowed in judging of them than of other offences?

Why will the Senate be better prepared than others to exercise this discretion?

What is to be noted farther on this matter?

Have you any remarks or questions of your own to propose?

How far only can judgment in cases of impeachment extend?

What liability will remain to the party convicted?

What appears by comparing this with Art. 2, Sec. 4? Can you tell why such a discretion is proper?

What important modern governments are here noticed?

How did French Peers formerly hold their office?

Peers were abolished in 1831. They are now nominated for life by the king, only from among those who have held for a certain time high public offices,—ministers, generals, counsellors of State, prefects, mayors of cities of at least 30,000 inhabitants, presidents of royal courts, members of the National Institute, etc.

The British House of Lords has recently numbered 426. They are composed of Lords spiritual and temporal. The Lords spiritual are two English archbishops, and twenty-eight bishops, of whom four are Irish. These ecclesiastics are admitted to a seat in the House of Lords, in view of the number, education, wealth, character, and influence of the clergy; and as an equitable compensation for their exclusion from the House of Commons. The Lords temporal consist of five orders of nobility, viz. dukes, marquises, earls, viscounts, and barons. These titles are remnants of the old feudal system, under which they were given to military leaders, and signified, perhaps among other things, the amount of territory which they claimed, and over which they exercised jurisdiction. The honor and importance of the offices designated by these titles, rank in the order in which we have named them, the first being the highest. Lords are raised to their place in the upper House by royal prerogative. Sixteen of them are from Scotland, and twenty eight from Ireland. Their requisite age is twenty-one years. The total number of Lords and Commons in Parliament has, within a few years past, been one thousand and eighty-four. On the subject of apportionment we may farther remark here, that in the House of Commons, five hundred representatives are from England and Wales, fifty-three from Scotland, and one hundred and five from Ireland.

What change in 1831? How, and for what term, are they now nominated? And from what classes?

How many were the British House of Lords in 1830? What two kinds of Lords?

What are Lords spiritual, and how many? Why do they have a seat in the House of Lords?

Of what do Lords temporal consist?

What is said of these titles? What of the honor in the offices designated by them?

How do Lords obtain their seat in the upper House?

How many from Scotland and Ireland? What is their requisite age?

What was the number of Lords and Commons in 1830?

How are the Commons apportioned to the three kingdoms?

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

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

The debate on the first clause of Sec. 4, arose from a wish at the same time to preserve the sovereignty of the States, and to secure a representation from the States, in case they should neglect to make provision for electing Representatives or Senators, or through party influence make such laws as to defeat the choice of them. Should such a practice arise and prevail in a State, through disaffection to the general Government, or otherwise, the Congress may interfere, and secure to those who may remain loyal the privilege of being represented in Congress. The State Legislatures having the sole power to choose Senators, they must be chosen at the place where the Legislature convenes.

"The Congress shall assemble," ect. Some division appeared in the Convention on the necessary frequency, as also on the policy of fixing the times, of the meetings of Congress. By some, also, May was supposed to be a better season for a session than December. To this it was argued, in reply, that the winter is the best season for business. Some of the plans proposed contemplated yearly meetings.

Most modern Legislatures meet at least once a year. Some diversity appears on this subject in the practice of the different States of the Union.

Repeat Sec. 4, first clause. From what did the debate on this clause arise?

State a case in which Congress may interfere as provided?

What makes the place for choosing Senators improper for Congress to decide?

What division in the Convention is noted?

What time besides December was proposed for meeting? What argument in favor of December? Do you think of any other?

What is the practice of most modern Legislatures with regard to yearly meetings? Where does some diversity prevail?

Can you name any State Legislature that meets twice a year? Any that meets once in two years?

SEC. 5. Each House shall be the judge of the elections, returns, and qualifications, of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

The Assemblies of the people in ancient Athens were remarkable for their frequency. They convened four times every thirty-five days, besides extraordinary occasions. The Amphictyonic Council met twice a year.

SEC. 5. "Each House shall be the judge," etc. The principal debate on this clause was on the question of a proper quorum. Some thought a majority too large. It would put too much power in the hands of a few, who by seceding at a critical juncture might frustrate an important measure, and even by constant absence vitally endanger the government. A small quorum was also the right one, because it would always hold out a powerful motive to all members to be present. By others it was said that a quorum less than a majority would give the power of legislation to a number dangerously small, especially to the interests of distant States, whose members would attend with more difficulty, and much oftener be necessarily absent, than those of States near the seat of government. The objections to a large quorum were finally removed by the power given to a smaller number, i. e. the smallest number who may be present at the right time and place, and constitutionally qualified to act,—to adjourn from day to day, and compel the attendance of absent members.

How often did the popular assemblies of Athens meet? The Amphictyonic Council?

Of what is each House the judge?

How much is a quorum? What do you understand by a *quorum*?

What may a smaller number do?

What occasioned the principal debate on Sec. 5?

Why did some think a majority too large?

What advantage did they expect from a small quorum?

What objection had others to a quorum less than a majority?

How were the objections to a large quorum finally removed?

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

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

"Each House may determine," etc. Some debate arose with regard to the number that ought to be required for the expulsion of a member. It was finally fixed at two thirds, because it was two great a power to be given to a bare majority. Times of party violence might arrive, it was evident, when a majority might be united to expel an obnoxious individual, more on account of the party to which he belonged, than his disorderly behavior.

"Each House shall keep a journal," etc. Some attempts were made to introduce a distinction between the two Houses, in the rule respecting the publishing of their journals, and the entering on them of the yeas and nays. Some thought it unnecessary to require the publication of the journals. The matter of them would be called for by the people, and one way or other be divulged fast enough. The argument for publishing was that otherwise the people would be alarmed with a fear that the Legislature would be a secret conclave. This would be as true in the case of one House as of the other, so that they ought to be both required or exempted alike. The exception, with regard to cases requiring secresy, was also found equally necessary for both Houses. The object of entering the yeas and nays was to secure the responsibility of members to their constituents. It was ar-

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What may each House determine? For what may it punish members? What majority may expel a member?

What in this clause occasioned debate? Why was the number fixed at two thirds?

What journal must each House keep? What exception to publishing?

How many are necessary to call for the entering of yeas and nays?

What attempts were made on this clause?

What arguments for and against publishing the journals?

Why ought there to be no distinction in what is required of the two Houses?

What was the object of entering the yeas and nays?

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

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gued against it, that it could do no good, and might needlessly injure the reputation of members to have their votes recorded, and spread before the public, so long as the reasons of them could not appear on the journal, nor be appreciated nor understood by the people at large. One fifth is required to call for the entering of yeas and nays, in order to prevent the filling up of the journals with names on insufficient and frivolous occasions. This rule was favored as a suitable mean between a single member and a majority, or other large proportion. Some thought it sufficient, in the case of the Senate, to allow any member who pleased to enter his dissent on the journal. Others thought that if a member in the minority might enter his dissent, with his reasons, which it seems was contemplated, the majority might complain if the same right were not extended to them. But such a course would fill the journals of the Senate with matter unreasonable both in kind and amount.

"Neither House, during the session of Congress," etc. On this clause the principal fear was that the two Houses by uniting might remove to another place. Strong interest was felt in several cities that Congress should hold its sessions there; and a party feeling might arise to induce them often to change their place of meeting. The clause "during the session of Congress," was supplied to lessen this danger, and to induce Congress to establish a seat of government by law.

What were the arguments against it?

Which arguments seem to you to have the most weight?

Will the people at large, in the present state of public information, be likely to understand the reasons of legislators for their votes?

Why is one fifth required to call for yeas and nays?

On what other account was this rule favored?

What did some think was sufficient in case of the Senate?

Of what might the majority complain in such case? What objection to such a course?

In view of the last clause of Sec. 5, what was the principal fear?

What interest was felt in certain cities?

What party feeling might arise? What words were inserted to lessen this danger? And for what other purpose?

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

SEC. 6. The greatest questions arising under the first clause of this Section were—whether or not Senators and Representatives should receive the same compensation,—whether it should be paid by the States or the National Treasury,—whether or not it should be fixed by the Constitution,—and whether or not the Senators should receive any compensation at all for their services. On these questions there was much and earnest discussion. Senators, it was said, would be longer absent from home than Representatives; would perhaps, in time of war, be obliged to be in continual session, and to remove with their families to the seat of government; and hence they ought in reason to be allowed a higher compensation. Motions were made that members of both Houses should be paid by the States which they represented. This was especially urged in the case of Senators, who were intended especially to represent the States as sovereign powers. These motions were opposed, and motions made to pay them out of the National Treasury, on the ground that the former plan would render them too dependent on the States. The States might at any time affect them by cutting down their salaries, or the promise of increased compensation, so as to secure their dependence on

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Do Senators and Representatives receive a compensation? How ascertained and paid?

What privilege from arrest do they enjoy, and with what exceptions? What privilege in speech or debate?

What important questions arose, Sec. 6, first clause?

What arguments for a higher compensation to Senators? What, that both be paid by their States?

Why was this especially thought to apply to Senators?

What argument for paying them out of the National Treasury?

How might the States affect them, if they were paid by the States?

a prevailing faction. It was also urged that it would be laying very unequal burdens on the States; for besides that some States would be richer than others, the other expenditures of the richest States might be by no means the largest. That their stipends should be fixed by the Constitution was urged, because it would be improper, and throwing too great a temptation in their way, to allow them to pay themselves. To this it was replied, that if they should fix the salaries by the Constitution, especially of the Senators, it might be said that some of the Convention were in hopes of having a seat in the Senate, and so were carving out loaves and fishes for themselves. This especially, if they should fix on liberal stipends. Times might change too; money and property being more plenty at one time than at another; so that no rule could be always applicable. Lastly, some thought the *Senators*, at least, should receive no compensation at all. Mr. Gov. Morris observed, "They will pay themselves, if they can, and if they cannot, they will be rich, and can do without it." This he said in view of a favorite scheme with himself and some others, that there should be a property qualification for all offices created by the Constitution. They could not lose sight of the English and French nobility, and the great weight which wealth gives to the Chamber of Peers and the House of Lords. This weight they considered *necessary* in the second branch of the Legislature; and if no compensation were allowed them, none but the rich could afford to go, and of course none others would be chosen. And they thought that Senators should not be exposed to the temptation which a salary always holds out. And here we may notice, that one draft was made of the Constitution giving Congress the right to fix the property qualification for offices under the Constitution. The impropriety of allowing the Legis-

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What was urged with regard to the burden this plan would lay on the States? How would it appear to be unequal?

What argument for fixing stipends, or salaries, by the Constitution? What was replied to this?

What circumstances might operate to prevent any rule from being always applicable?

What did some think with regard to Senators?

What was Mr. Gov. Morris's remark? In what view did he say this?

What examples had he and others in view?

What weight did they consider necessary in the Senate?

How did they think to get the rich always chosen to the Senate?

What temptation did they think Senators should not be exposed to?

What was given to Congress in one draft of the Constitution? Did such a course seem proper?

lature to fix this for themselves being pretty apparent, a farther attempt was made to fix it by the Constitution. Mr. Pinckney moved that "the President, Judges, and members of the Legislature, should be required to swear that they were respectively possessed of a clear and unincumbered estate,"—different in each case, but left blank for the present; the sums to be determined afterward. In his view, the President ought to be worth 100,000 dollars; each of the Judges, 50,000 dollars, and members of the National Legislature should be worth "each in that proportion," i. e. 25,000 dollars, it would seem. The above motion for a property qualification, leaving the sums blank, was seconded by Mr. Rutledge. But the whole plan of not paying Senators, as well as a property qualification, was overruled by the prevailing inclination to bring the talents of the poor as well as the rich into the National Councils. Such proposals seemed to establish a distinction between the rich and poor, incompatible with republican institutions, and the natural equality of mankind. It was feared also that it would not be so likely to suit the people, and would tend to defeat its adoption, if the compensation of members of Congress were fixed by the Constitution. It was therefore left to be ascertained by law.

The several plans proposed by Messrs. Randolph, Pinckney, Patterson, and Hamilton, recognized the necessity of paying members for their services.

The privilege from arrest, and the freedom of speech in debate, which are secured to members of Congress during session, have such an evident propriety in them, that they excited but little remark. If a member might be arrested and detained for debt, or as a witness, or juror, or for any thing short of serious and well sustained charges, there are not wanting those who would keep half the members of Congress arrested all session time, in order to prevent their influence or votes on party questions. If he might be prosecuted or impeached for words spoken in debate, much of the same

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What farther attempt was made?

What was Mr. Pinckney's motion? What was his opinion with regard to the amount which the President and others should be worth?

What do you think of such a plan?

Do you think the rich only should be chosen to office? What are your reasons?

What prevailing inclination overruled all these plans?

What seemed the effect of such proposals?

What was feared if the Constitution should fix the stipends in question?

What if a member might be arrested for any thing short of high crime?

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

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result would follow; members would fear to speak their sentiments, or tell what they know; and they would be in the case of a witness who was liable to be prosecuted for his testimony. The necessity of freedom from arrest for debt has been questioned; but it is probably best as it is. Legislative bodies in all nations have found such privileges necessary. But the extension, in the British Parliament, of the freedom from arrest to the coachmen and waiters of members, has no such excuse, and is nothing but an instance of the haughtiness of nobility.

The freedom of speech secured, has reference solely to what is said in debate, while the House is in session. But if a member publishes his speech, he is liable to be called to account for it, as for any other publication.

"No Senator or Representative shall," etc. The checks in this clause occasioned much debate. Many thought that the best talents would be discouraged by them, so that the fittest men for seats in Congress could not be obtained for that body, because they would thus be incapacitated for other offices. But the necessity of guarding against venality and corruption in members disposed to prepare offices for themselves or friends, seemed to be the main argument for the present form of the Section. Cases were cited of such partiality in some of the State Legislatures, and in the British House of Com-

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What if he might be prosecuted for words spoken in debate?
What necessity has been questioned?
What have all Legislative bodies found?
What practice in the British Parliament? What is said of it?
How is the freedom of speech restricted? What if a member publishes his speech?
What disabilities for office are created by the last clause of Sec. 6?
What objections were expressed to the checks in this clause?
What was the main argument for adopting them? What cases in point were cited?

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the

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mons. The practical effect of this clause is, not that a member of Congress cannot be appointed to office under the United States, where the office or its emoluments have *not* been the work of the time for which he was elected, nor that a United States' officer cannot be chosen a member of Congress; but that in such cases, the office first held is vacated. Mr. Randolph proposed in his plan checks even more strong than those found here.

SEC. 7. "All bills," etc. By this limitation the right of originating bills on any other subject is given to the Senate as well as the House of Representatives. The object of it is the same as that of giving the same power to the British House of Commons. It was for the greater security of the people that this right was given exclusively to the popular branch of the Legislature, the representatives of the democracy. It was strenuously supported as a guard against aristocracy. On the other hand, it was strongly opposed as needless, clogging the government, and depriving the nation of the best talents, on a subject where they were especially needed. Mr. Randolph's plan was opposed to it.

"Every bill which shall have passed," etc. This clause furnished matter for long and strenuous debate. Numerous attempts were made to obviate difficulties, and guard equally against Executive and Legislative tyranny. By some, an absolute negative was sought for the Executive; by others, three fourths of each House were thought necessary to overrule the negative of the Executive; and this regulation once

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What is the practical effect of this clause?
What of the plans of Mr. Randolph?
Where must all revenue bills originate?
What power has the Senate? What right is given to the Senate by this limitation?
What foreign body has the same power?
What was the object in this arrangement?
On what ground was it supported? On what ground opposed?
On which side was Mr. Randolph's plan?
What is necessary that a bill after being passed should be a law?

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

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prevailed in the Convention. By others still, an attempt was made to unite the Judiciary with the Executive in the revision of bills, and give their objections equal weight with that of the President.

The exception, "unless Congress by their adjournment prevent its return," gives the President an opportunity sometimes to frustrate the designs of Congress, without returning a bill with his objections. When the time for which the Representatives were chosen is so near its expiration that the House must be dissolved before the lapse of ten days, the

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What if the President do not approve it? What shall the House do with his objections? And with the bill?

If two thirds agree to pass it, what then?

What if two thirds of the other House pass it?

What is to be done in all such cases?

What if the President do not return a bill in ten days? What exception?

What numerous attempts were made?

What different views prevailed?

What opportunity does the exception give the President? In what case? And how?

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

President can silently retain a bill till the dissolution, or inevitable adjournment, of Congress, in which case it fails of course of becoming a law. Perhaps this is a defect in the Constitution. No one will deny that the veto power may sometimes be a very salutary restraint on hasty and injudicious legislation; but we may safely assert that if a President veto a bill which has been long considered both in and out of Congress, and which he has reason to think agreeable to a majority of the people, or if, having a reasonable time for considering a bill, he defeat it by silently retaining it till the day of the constitutional dissolution of the House, he is liable to a charge of abuse of power.

"Every order, resolution," etc. This clause was added to prevent the Legislature from evading the negative of the President by passing laws in the shape of resolves, orders, etc.

The kings of Great Britain and France have an absolute negative on the bills passed by their respective Legislatures. The king of Great Britain, however, has not exercised this power since the year 1692. He depends on his influence to prevent the passage of bills which he does not approve. If this influence should fail of such prevention, that fact would show so strong a bias in the nation toward the bill passed in opposition to it, that he would not think it safe to withhold his assent. The Convention had this example in view, and doubtless thought that the veto power would very rarely be exercised.

Is this in your opinion a defect in the Constitution?

Is the veto power ever necessary? What may we safely assert?

What is the object of the last clause of the Section? Repeat the substance of it.

What power have the kings of Great Britain and France?

How long since the king of Great Britain has exercised this power? What does he depend on instead? What if his influence fails?

What did the Convention think of this example?

SEC 8. The Congress shall have power:—

To lay and collect taxes, duties, imposts, and excises;

SEC. 8. "To lay and collect taxes," etc. This clause gives to Congress the full power of adjusting a tariff of duties, whether for protection, or revenue, or both, on the trade of the United States. *Duties*, in distinction from *imposts*, were explained to mean what is paid on things not matters of commerce with other nations, as a duty on stamped paper. *Excises* are also imposts on the retail business, or the selling of goods to the consumer; while *imposts*, in their unrestricted sense, have application to foreign commerce alone. Hence the power of Congress extends not only to the regulation of foreign, but also of domestic trade. The restriction of this power, contained in the next Section, which prohibits a tax on exports, was much discussed here. Some considered it highly proper to tax exports in many cases. They would, for instance, tax the export of raw material, in order to encourage home manufacture. Thus they would tax the export of cotton in order to promote the making of all kinds of fabric from that article. They would tax articles in which we are not rivalled in the foreign market, so as to raise the price of them abroad, and in effect make the foreign consumer pay the export duty. Of this kind of articles are cotton and tobacco. The Southern members, however, saw, or thought they saw, an intention to use the power of taxing exports for the suppression of slavery and the slave-trade. A majority of Congress must, for the present at least, be from the Northern States; and the fear was that they might diminish the value of slaves and slave-labor by high duties on the export of cotton, rice, indigo, and tobacco. Col. Mason,

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What power does the first clause of Sec. 8 give to Congress?

Define *duties*. Give an example.

What are *excises?* Name examples. (Hawkers, pedlars, retailers of spirits, etc.)

What are *imposts?* Did you ever hear either the constitutionality or expediency of protection denied?

Did you ever hear of *free trade?* What does it mean?

To what does the power of Congress extend?

What restriction was discussed here?

Why would some tax exports? Give the cases supposed.

What alarmed Southern members? What did they fear from a Northern majority?

of Virginia, repeatedly expressed his expectation, that soon the Southern States would be more populous than the Northern, and of course hold the balance of power; and he reminded the Northern members, that when such should be the case, the North would need a guard against the discouraging of exports as much as the South did then. He probably had no idea of the wretched influence of slavery, in preventing the population, wealth, and industry of a country.

The experience under the Confederation was enough to convince most men of the propriety of uniform imposts in all the ports of the United States.

As so much has been said on the constitutionality of the encouragement of domestic manufactures, *as a primary object of legislation*, it may be well to add a little on that head. No one doubts the propriety of encouraging them *incidentally;* i. e. that when it is necessary to construct a tariff for revenue, a secondary regard may be had to the fostering of home industry in the selection of the articles to be dutied. The question is, "Does the constitution give Congress the power to protect home manufactures, without any reference to the raising of a revenue, or even though the revenue should be diminished by such protection?"

It is important to know what the framers of the Constitution thought and intended on this matter. They were perfectly familiar with the idea of protection, for protection's sake; they had learned it under British government, and had been trying their utmost to effect it under the Confederation. They considered it as one of the rights of sovereignty, inherent in all the States. No one of them ever suspected that this power was to be given up by the States, and yet not delegated to the union to be exercised for them. Such a requirement would have been fatal to the adoption of the Constitution. They therefore thought the power to protect domestic manufactures, as a primary object of legislation, was given to Congress by the Constitution under their hands. This is what they intended it should do; and if they failed here, it was their mistake.

What did Col. Mason expect? Of what did he remind Northern members? What made him think so?

What did the experience of the Confederation show?

Of what has much been said?

On what are all agreed? Explain this.

What is the true question? What is it important to know?

What were they acquainted with? Where had they learned it?

What had they been trying to do? What did they consider it?

What did they not suspect? What would such a requirement have been? What did they think was given to Congress? What did they intend?

But the terms of the Constitution are amply large enough to embrace this power. In view then, both of the intention of its framers, and of its own terms, it should be understood to vest this power in Congress. They have the power "to lay and collect taxes, duties," etc., and "to provide for the common defence and general welfare of the Union;" of course if they judge that the latter object can best be effected by imposts and regulations of trade, they have the right to seek it by those means.

It is manifest from the history of the Constitution that one object of it was to encourage manufactures and agriculture by laws framed for that purpose.

Weighty opinions are also on the same side. Mr. Madison, a member of the Convention, in a letter dated Sept. 10, 1828, after quoting the views of several States, at the adoption of the Constitution, to that purpose, adds, "But ample evidence may be found elsewhere, that regulations of trade, for the encouragement of manufactures, was considered as within the power to be granted to the new Congress, as well as within the scope of the national policy.

"If Congress have not the power to encourage manufactures, it is annihilated for the nation, a policy without example in any other nation, and within the reason of the solitary one in our own.

"That the encouragement of manufactures was an object of the power to regulate trade, is proved by the use made of the power for that object in the first session of the first Congress under the Constitution, when among the members present, were so many who had been members of the federal Convention that framed the Constitution."

The act alluded to was the second act of the first session of the first Congress, and was signed by President Washington, himself a member of the federal Convention. The preamble of that act was in these words: "Whereas it is necessary for the support of government, for the discharge of the

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What is said of the terms of the Constitution?

What is then the argument? What farther argument?

What is manifest from the history of the Constitution?

Whose opinion is quoted? What ample evidence does he say may be found?

What if Congress have not the power in question?

What farther argument from an act of the first Congress?

What members were present? Must they not have understood what the Constitution meant?

Who signed the act alluded to? Must not he have understood the power of Congress in the matter?

Give the substance of the preamble.

To pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

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debts of the United States, *and the encouragement and protection of domestic manufactures*, that duties be laid on goods, wares and merchandises imported."

It is manifest also from subsequent practice. On this Mr. Madison also says: "A further evidence in support of the Constitutional power to protect and foster manufactures by regulations of trade, are evidence that ought of itself to settle the question, is, the uniform and practical sanction given to the power, by the general government, for nearly forty years, with the concurrence of every State government, throughout the same period; and it may be added, through all the vicissitudes of party which marked the period."

The *utility*, or *equity*, of a particular tariff, is quite another question. Congress may err in the use of their discretionary power, with regard to the amount of duties, and the articles on which they are laid; but still their acts may be constitutional. The question, however, between the advocates of protection and free trade must be decided by experience. A year of experience is worth an age of theory.

"To pay the debts and provide for the common defence," etc. It is a question whether this clause is a separate one from the former, and gives a separate and substantial power to Congress, or not. The grammatical construction favors this view, as do some of the best judgments; also carefully considered editions of the Constitution. Other editions are different, also other judgments, among which is Mr. Jefferson's. They would consider the whole as equivalent to this:

From what else is this power manifest? Whose opinion is here quoted?

What farther evidence does he give? What weight does he attach to this evidence?

What had concurred with the general government in this sanction?

What of the *utility* or *equity* of a particular tariff?

In what may Congress err? Will that make their acts unconstitutional?

How must the question between the advocates of protection and free-trade be decided?

Which is worth most, *experience* or theory?

What question respecting this clause? What authorities pro and con?

To borrow money on the credit of the United States;

"The Congress shall have power to lay and collect taxes, etc. *for the purpose* of paying the debts, and providing for the common defence," etc. Nothing very important, however, depends on the decision of this question.

"To borrow money on the credit of the United States." In connection with the power to borrow money, a long and able discussion was held on giving Congress the power to "emit bills of credit," i. e. issue paper money for the payment of Government debts, and for circulation as the representative of gold and silver. The experience under the Confederation of depreciated and worthless paper alarmed many members very much, and determined them, if possible, to shut every door against the repetition of such disaster. Others again saw the possibility, as they thought, that such a resort might be much needed. The revolutionary war, it was said, could never have been sustained without the emission of paper money. The power finally was not given; but it was understood, of course, that as Congress could borrow money on the credit of the United States, they could give the promissory note or bond of the government for the security of the debt so incurred; and so for any claim against the government, whether for service or interest. It is of course judged to be constitutional to issue Treasury notes, while at the same time a question is raised as to the constitutionality of a United States' bank. This is a question on which *doctors disagree;* this fact should make others modest in the expression of opinions, while it also gives them a chance to speak without censure.

How did Mr. Jefferson understand it?
What discussion in connection with borrowing money?
What is it to emit bills of credit?
What experience under the Confederation?
How did some members feel? What were they determined to do?
What did others see? What example?
Was the power given to Congress to emit bills of credit? Was it withholden?
Do you think the Constitution would in any case warrant them in emitting bills of credit?
What was understood? What is judged constitutional?
What question has been raised? Who disagree on it?
Who are doctors? What of this fact?

The rule is, if a power is not expressly given, it must, to be constitutional, be implied. Is the power to incorporate a bank given to Congress, then, by implication? If so, it is in the last clause of this Section,—"To make all laws necessary and proper for carrying into execution the foregoing powers," etc. Mr. Jefferson says that a measure, in order to be necessary for carrying a power into execution, must be such, and the power to adopt it such, that without it, the power it was intended to carry into execution must be nugatory. But the aid of a bank is not necessary to carry on any operation of government. It is therefore unconstitutional, he says, for Congress to incorporate a bank. But indeed what can be named as necessary in this sense? What methods would Mr. Jefferson propose? "Bills of exchange, and treasury drafts," he says, will answer the purposes of government. But would that great man say that such instruments are so necessary that without them any powers of Congress would be nugatory? Cannot the operations of government be carried on without them? Besides, he proposes another way, which is by the aid of "existing banks." Are not "bills of exchange and treasury drafts," then, by his own showing, unconstitutional? And would not every possible way of managing the financial concerns of the government be unconstitutional, in his sense, because not *necessary*, so long as there remains another way that the work might be done? A bank of the United States is unconstitutional, because the purposes of government may be answered by other means. Of course, those other means are unconstitutional, because the purposes of government may be answered by a bank. It seems as if Mr. Jefferson's reasoning would lead us in this train.

The advocates of a bank explain *necessary*, in the Constitution, to mean no more than "*needful, requisite, incidental, useful*, or *conducive to*." Not *necessary* in such sense as to be essential to the existence, or actual validity of any power vested in Congress. If a measure comes before Congress,

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What rule is laid down?

Where is the power given to Congress, if at all, to incorporate a bank?

What does Mr. Jefferson say as to a measure's being necessary? What is his reasoning? Is any measure *necessary* in this sense?

What measures does Mr. J. propose instead of a bank? Are these measures *necessary*, in his sense?

What other method does he name? What does this prove, by his showing?

What, by this rule, would be true of every way?

Give the argument concisely?

How do the advocates of a bank explain *necessary*?

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

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recommending itself to them by its own nature as eligible for, and adapted to, the purpose of carrying into execution any powers vested in them, they say Congress is at liberty to adopt it, though they know that the objects of it may be answered in a variety of ways.

On the whole, if an opinion may be expressed here, it is that the aid of a bank, bills of exchange, and treasury drafts, the assistance of State banks, the actual transfer of gold and silver, and perhaps many other ways, are all among the methods by which certain powers of Congress may be carried into execution; and among all that are not prohibited, they are at liberty to choose that which, in their best judgment, is on all accounts most eligible and conducive to the end proposed.

President Washington signed the bill incorporating the bank of 1791. It would seem that some changes of opinion on the subject took place, for President Jefferson signed a bill establishing a branch bank at New Orleans, and President Madison, who had been a leading and powerful opponent of the first bank in 1791, and that too on the ground of its unconstitutionality, approved and signed the bill incorporating the second bank in 1816.

"To regulate commerce with foreign nations." In addition to the power to lay and collect duties on foreign merchandize, they have the power to regulate all the circumstances of trade, and prescribe the terms of all manner of intercourse between the United States and other countries.

"And among the several States." This must of course mean commerce that concerns more States than one. That which concerns but one, is under the cognizance of that one alone. The great difficulty here arose from the fact that the

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When do they say that Congress may adopt a measure?
What opinion is expressed here?
Who signed the bill incorporating the bank of 1791?
What appearance of change of opinion in others?
Have you an opinion on the constitutionality of a U. S. bank?
What difference do you see between the *constitutionality* and the *expediency* of a bank or any other measure?
How does the power to regulate commerce with foreign nations extend?
What commerce between the States is meant?
Can Congress direct commerce that concerns but one State?

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

States had become attached to the regulation of their own trade; also that their regulations had been oppressive and vexatious to each other. This last consideration had so much weight that it was finally left with Congress, as being the safer course, to regulate commerce between the States.

"And with the Indian tribes." An Indian tribe, situated within the territorial boundaries of a State, or of the United States, but exercising the powers of government, and national sovereignty, under the guaranty of the general government, is held to be politically a State, but not a *foreign* State, in the sense of the Constitution. It is rather a domestic dependent nation, and as such is doubtless entitled to sue in the Courts of the United States. Mr. Jefferson's opinion was that the United States had no right to the Indian lands, not ceded by them, except the right of pre-emption. In this opinion every enlightened and unbiassed judgment must concur. How does the treatment of the tribes at the South, especially of the Cherokees of Georgia, appear by the side of this doctrine?

"To establish a uniform rule of naturalization," etc. The fact that the President, Vice-President, and members of Congress, are to be chosen by the citizens of all the States; also that trade and commerce are carried on berween the citizens of the several States under the guaranty of the Constitution; makes the provisions of this clause obviously proper and necessary.

"And uniform laws on the subject of bankruptcy." States often have their own bankrupt laws. This they have a right to do, when and where Congress has not exercised its power. As far as Congress uses the power here given, the power of the States is controlled and limited; but when Congress does

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What difficulty arose in settling this clause?

Is an Indian tribe a foreign nation? What is it, and what right has it?

What opinion of Mr. Jefferson is quoted?

What is pre-emption?

What do you think of the removal of the Cherokees, and other tribes?

Why should naturalization and bankrupt laws be made by Congress for the whole Union?

Have States their own bankrupt laws?

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

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

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors

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not use the power, the State bankrupt laws are constitutional, provided that they do not impair the obligation of contracts.

"To coin money," etc. Uniformity is especially necessary, both in coins and weights, and the various species of measure. This could not be attained by leaving the matter to the States; hence the necessity of committing it to Congress. The same reasons that make uniform bankrupt laws desirable, apply here.

"To provide for the punishment," etc. This is the security of Congress, and their only adequate sanction, in borrowing money and regulating the coinage.

"To establish post-offices," etc. Some maintain that Congress can only direct the carrying of the mail, and the establishment of post-offices on roads already existing, but cannot open or make any new road. Others more properly maintain that they can appropriate money for the making of a road where they judge it necessary that the mail should pass. The making of the road is a necessary means for a necessary end. Without this power, the legitimate ends of the government may be permanently obstructed, at least to a certain extent, and its objects fail of being realized.

"To promote the progress of science and useful arts," etc. That the government should be the patron of learning and science was the design of many, if not all, of the members of

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What is necessary in order that such laws should be constitutional?

What is it to coin money? Do you know where it is done? What is such an office or establishment called?

In what is uniformity especially necessary?

Could it be attained by leaving it to the States?

What other reasons apply here?

Why should Congress have power to punish counterfeiters of coin and forgers of U. S. securities?

What is a post-office? Post-road? Mail?

What difference of opinion is held? Which is probably right? What arguments?

How may Congress promote science, etc.?

the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

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the Convention from the first. Several proposals were made to authorize Congress to establish a national university; this was embraced in the plan proposed by Mr. Pinckney. It was finally judged unnecessary because Congress would of course have a right to establish a university in the territory containing the seat of government, over which they were to have exclusive jurisdiction. In addition to this, it was very properly provided that encouragement should be held out to authors and inventors by giving them suitable copy-rights and patents. This power did not exist under the Confederation. Being confided to Congress, it does not exist in the States; but the States may give exclusive rights to *introducers* of new works and inventions, who do not claim to be authors or inventors.

"To constitute tribunals," etc. This power entered into the plans of Messrs. Randolph, Pinckney, and Hamilton. It was objected to on the ground that the State courts would be sufficient to do the business, with an appeal to the Supreme Court; that it was encroaching on the province of the States to erect such tribunals within their limits; and that it would tend to create divisions and jealousies between them and the State courts. On the other hand, it was urged that if courts, having final jurisdiction in many cases, were not established in the several States, the number of appeals would be so great as to be oppressive to the Supreme Court, and even beyond its power of revision. The judicial authority of the nation ought also to be so administered that the general government should not be any way dependent on the good-will or discretion of the States.

What is a copy-right? What is a patent-right? Do these rights last permanently?

What was the design of the Convention?

What proposals were made? Whose plan contained such a provision? Why was it judged unnecessary?

Did the power to grant exclusive rights exist under the Confederation?

What State right is mentioned?

What power entered into the plans of Messrs. Pinckney and Hamilton? On what ground was it objected to? What was urged in its favor?

How ought the judicial authority of the nation to be administered?

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

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

"Law of nations." The oceans and seas on the globe are the great highway of nations, where all have an equal right of way. Certain general rules and principles have been found necessary to be observed in their intercourse with each other, which all acknowledge, and which are called the "law of nations."

"To declare war." The plans of Messrs. Pinckney and Hamilton proposed to give the Senate the sole and exclusive power to declare war. In support of this, it was said that the whole Legislature would be too large a body, and act too slowly; besides, it might be presumed that the Senate would be better informed, and of course a safer depositary of such a power. The same kind of arguments were also used in favor of giving the President the power to declare war. Neither the Senate nor the President would declare war, it was said, without a pretty certain knowledge that the people would sustain it. But these doctrines seemed to the Convention to savor too much of monarchy for a republic, and of course were discarded.

"Letters of marque and reprisal" are retaliatory measures, short of a declaration of war. They authorize a naval officer to make captures, on the high seas, from a power that refuses to make indemnification for injuries done, or to perform the stipulations of a treaty. The words "marque and reprisal" are nearly synonymous, as used; there is this difference laid down, however, that *reprisal* signifies simply *taking again*, and *marque* conveys the additional idea of passing the frontiers of a State in order to such taking.

What is piracy? Felony? What are the oceans and seas?
What is the "law of nations?"
What is it to declare war?
What did Messrs. Pinckney and Hamilton propose? What arguments for that?
To whom else did some propose to give the power to declare war?
What would neither the President nor the Senate do?
How did these doctrines appear to the Convention?
What are letters of marque and reprisal? What do they authorize?
What difference in the meaning of the words *marque* and *reprisal*?

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

The power to declare war implies the power to grant letters of marque and reprisal. They are both named because the latter is sometimes a measure of peace; that is, it may prevent the necessity of a resort to general hostilities. The power in question is essential to complete sovereignty, and must in the nature of the thing reside in every national government that is intended to use force for any purpose of offence or defence whatever.

The power to declare war is always claimed and exercised by absolute monarchs. And even in limited monarchies, this is the theory of the Constitution. In Great Britain and France, the monarch declares war.

In the ancient republics of Greece and Rome, the power of peace and war was in the assemblies of the people, after the question had been submitted to them by the Senate. Even the kings of Rome could not declare war until the question had been submitted to the Senate and people.

The power to make rules concerning captures is necessarily co-existent with the power to declare war and make reprisals.

"To raise and support armies," etc. This is an indispensable incident to the power to declare war; but then there is the danger to be guarded against of large standing armies in time of peace. These form the strength and security of despotic governments. Being held separate from the mass of the people, and regularly paid by the government for their services, they form an interest separate from that of other

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What does the power to declare war imply?
Why are they both named?
To what is the power essential? Where must it reside?
By whom is this power always claimed?
How is it in limited monarchies? Give examples.
Where was this power in ancient Greece and Rome?
By whom was the question submitted to them?
What remark of the kings of Rome?
What powers are co-existent?
What powes is next named? To what is this an indispensable incident?
For how long may appropriations be made?
What danger to be guarded against?
What do standing armies form? How are they held and paid? What interest do they form?

To provide and maintain a navy;

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

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

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citizens; they quickly lose sympathy with the body of the people, and become attached to the monarch by whom they are employed and paid; they are thus the ready instruments in his hand for the accomplishing of his designs, and the securing to him of his power. This is according to all experience, ancient and modern. The establishment of arbitrary power has begun in the maintenance of standing armies in time of peace; and all despotic governments maintain them as their best security.

To guard against such danger, the appropriations for the support of armies are confined to two years. This term was fixed with an eye to the biennial election of Representatives, in order not to curtail unreasonably the power of one Congress, and at the same time to give the people an opportunity, in the choice of the next, to express their will in the matter. The practical result is, not that the United States are ever entirely without an armed force; but that in time of peace it is very small, and distributed to a few fortresses on the frontiers.

"To provide and maintain a navy." It was only for a short period of our national history that the wisdom and propriety of this power, or the necessity of its exercise, were ever questioned. Those who did it had the idea of making the United States an agricultural nation, to the general exclusion of commerce and navigation.

"To make rules for the government," etc. It is impossible that the preceding powers could exist and be exercised without this.

What do they lose? How become attached? What consequence?
What does experience teach in this matter?
How has the establishment of arbitrary power begun?
Why do despotic governments maintain standing armies?
What guard against this danger? Why was that term fixed on? With what regard to Congress and the people? What is the result?
Has the expediency of maintaining a navy ever been questioned? What was the idea of those who questioned it?
What necessity that Congress should make rules for governing, etc. the land and naval forces?

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

To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and

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"To provide for calling forth the militia," etc. The principal debate on this clause arose from an apprehension that it might be interfering too much in the internal affairs of the States for the General Government to interpose for the suppression of insurrections within their limits. Leave the States, said some, to suppress insurrections within their own borders. But the power was so obviously necessary for self-preservation, as well as for guaranteeing a republican form of government to each State, that it was given to Congress without serious opposition. The Constitution also, by fair construction, contemplates cases of imminent danger, as well as of actual insurrection and invasion.

The authority to decide when the exigency has arisen which requires the calling forth of the militia, (at least when Congress is not in session,) belongs to the President; though doubtless the State authorities could act when the danger was so imminent as to admit of no delay.

"To provide for organizing, arming," etc. The same necessity dictated this clause as the preceding one; the reservation being called for by a regard to State sovereignty. The case this clause is intended to meet is when a call has been made, and some mustering of the militia has taken place.

The force of this clause is somewhat modified by Art. 2 of the amendments.

From whence did debate arise with regard to calling forth the militia etc.? What did some say?

On what accounts was the power obviously necessary?

What farther is contemplated?

What power belongs to the President?

When might State authorities act in the case?

What dictated the next clause? What case is it intended to meet? How is its force modified?

What exclusive legislation is given to Congress?

the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ;—And

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"To exercise exclusive legislation," etc. It seemed necessary for the respectability of the government, that it should have a permanent location ; and this respectability would be increased by exclusive legislation over some extent of territory. Besides, in order to keep the National and State Governments distinct, and give no opportunity for intrigue or jealousy, it was judged that the seat of the General Government should not be the same with that of any State Government. This would be prevented by the exclusive legislation named. It was becoming also a matter of importance to the States themselves, on account of rivalries and disputes for the honor of furnishing a Capital of the United States, that the question should be early settled. The Congress too had been surrounded and insulted by a mob at Philadelphia, and not obtaining the needed protection from the State of Pennsylvania, had removed to Princeton, N. J., and afterward, for greater convenience, to Annapolis, Md. For the purposes of self-defence, therefore, as well as the other reasons, the Constitution gives the power to Congress to receive the cession of the necessary territory, and to settle the question of the seat of government. The same exclusive legislation is very properly extended over places purchased for national purposes. The result of the whole is that the District of Columbia has become the seat of the general government, under the exclusive legislation of Congress; and in numerous places, suitable portions of territory have been purchased, or otherwise acquired, of the States, for the erection of forts, magazines, arsenals, dock-yards, light-houses, etc. In making these ces-

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What seemed necessary? How would its respectability be increased?

Why should the seat of the National and State Governments not be the same? How might it be prevented? Why was it important for the States?

How had Congress been insulted? What did they do?

What other exclusive legislation was given? What is the result?

What portions of territory, and for what purposes, have been acquired by Congress?

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

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sions, the States have generally reserved the right to serve all State processes within the territory ceded.

"To make all laws which shall be necessary," etc. This sweeping clause is necessary, from the obvious impossibility of enumerating every thing which Congress may and must do, in order to answer the design of its creation. It was severely assailed, both in the Convention, and while the question of adopting the Constitution was pending. Yet all experience has proved its wisdom and propriety. It expresses just what all constitutional legislative bodies do. Besides, it is well understood that no act can be unconstitutional which is necessary and proper for the exercise of constitutional power. Of the proper import of *necessary* and *proper* we have already spoken. The great question seems to be whether the Constitution shall receive a *strict* or *liberal* construction. Some of the important measures on which a division of opinion has appeared, are the incorporation of banks, the acquisition of foreign territory, and the laying of embargoes for an unlimited time. No express authority for any of these appears in the Constitution; yet Congress has chartered banks, acquired the territories at least of Louisiana, Florida, and Texas, and laid an embargo which only a subsequent act could remove. All these require the liberal construction, and it would be happy if their several advocates could agree as to the principle of interpretation adopted.

What reserve have the States made in these cessions?
What is the last clause of this Section?
Why was this necessary? Was it opposed, and where? What has experience proved?
What does this clause express? What is well understood?
What do you think of the power here given? Is it any too great?
What is the true meaning of *necessary* and *proper* in this place?
What is the great question?
What important measures on which statesmen have been divided?
Does the Constitution expressly authorize any of these?
Has Congress adopted any of them? Give examples.
What construction of the Constitution do such acts require? Could a man who contended for the strict construction consistently advocate them?

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

SEC. 9. "The migration or importation of such persons," etc. Much and anxious debate arose on the first clause of this Section. All the States containing slaves had already prohibited the foreign slave-trade, except North and South Carolina and Georgia. When the proposition was brought forward to give Congress the power to prohibit or tax the importation of slaves, it met with strong opposition from those States. The proposed power was strongly advocated by the States that had prohibited the traffic. What their motives were, we cannot now say. Their territory and climate were favorable to the longevity and increase of slaves; and *perhaps* they would have been glad to secure the monopoly of the more Southern market, where the more sickly climate made immigrations necessary. At any rate they urged very proper reasons for giving Congress a prohibitory power. Mr. L. Martin, from Maryland, made the motion, giving as reasons, "in the first place, that as five slaves were equal to three freemen in the apportionment of Representatives," to restrain Congress from prohibiting or taxing the importation of slaves, would be "an encouragement to the traffic." Secondly, "Slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable." Thirdly, "It was inconsistent with the principles of the Revolution, and dishonorable to the

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Define migration and importation. Do these terms express the forcible carrying of captives from Africa in the hold of a slave-ship?

Is *admitting* them the same as forcibly landing them and selling them into perpetual slavery?

Is it strange that there was much debate on this clause?

What States had not abolished the foreign slave-trade?

How did they meet the proposal to give Congress the power to abolish the slave-trade?

Who advocated it? Did they wish to abolish slavery, or to supply the domestic market themselves?

What of their climate and territory? "And perhaps"—what?

What of the reasons they urged?

Who made the motion? What reasons did he assign in the first place? Secondly? Thirdly?

American character, to have such a feature in the Constitution." Col. Mason, from Virginia, remarked that "not to tax, would be equivalent to a bounty on the importation of slaves." And on a motion to subject them to a "duty," in the common language used concerning merchandise, Mr. Madison "thought it wrong to admit in the Constitution the idea that there could be property in men." And when the proposal came up, of 1808, as the year before which Congress should not prohibit the foreign slave-trade, he remarked, "Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character than to say nothing about it in the Constitution." And in support of the principle that the Government should have the power to tax the importation of slaves, and even prohibit it altogether, Col. Mason remarked, "This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia had already prohibited the importation of slaves expressly. North Carolina had done the same in substance." [The law of North Carolina "imposed a duty of five pounds on each slave imported from Africa; ten pounds on each from elsewhere; and fifty pounds on each from a State licensing manumission."—*Mr. Williamson.* It is obvious to notice here the early appearance of a watchful jealousy of the spirit of emancipation, and efforts to discourage it.] "All this would be in vain, if South Carolina and Georgia be at liberty to import. The Western people are already calling

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What was Col. Mason's remark? Mr. Madison's, and the occasion of it? And what on the proposal of 1808?

Where did Col. Mason say the slave-trade originated? What did he call it? Whom did he say the question concerned?

What evil was felt during the war? What in Greece and Sicily? Cromwell's instructions?

What was the law of North Carolina?

What can we notice here?

Give his farther remarks.

out for slaves for their new lands, and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities," etc. But to all arguments there was opposed the determination of the three Southern States. And it is remarkable that on all occasions where slavery was brought into view, they showed more *determination* and less *argument* than on almost any thing else. Mr. Rutledge "was not apprehensive of insurrections, and would readily exempt the other States from obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers." Mr. Pinckney said, "South Carolina can never receive the plan if it prohibits the slave-trade. In every proposed extension of the powers of Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes. * * * * If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome, and other ancient States; the sanction given by France, England, Holland, and other modern States. In all ages one half of mankind have been slaves." General Pinckney "declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their constituents." [i. e. if it allowed Congress to prohibit the slave-trade.] "South Carolina and

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With what did the three Southern States meet these arguments?

What did they show more and less of, when slavery was brought to view?

Mr. Rutledge's remark? What of religion and humanity? Of interest? What did he call the true question? "If the Northern States"—what?

Mr. Pinckney's remark? What examples did he cite?

Gen. Pinckney's remarks?

Georgia cannot do without slaves. * * * * He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause" [forbidding Congress to meddle with the subject,] "as an exclusion of South Carolina from the Union." Mr. Baldwin "had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point. That State has always hitherto supposed a General Government to be the pursuit of the central States, who wished to have a vortex for every thing; that her distance would preclude her from equal advantage; and that she could not prudently purchase it," [a General Government,] "by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives." Mr. Rutledge added, "If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, their expectation is vain. The people of those States will never be such fools as to give up so important an interest." Many members from the North would have left the matter entirely with the States where slavery existed, because it was a privilege which, as sovereign powers, they had heretofore enjoyed; and they would take them as they were, if they took them at all, rather than risk the whole experiment by trying to make them what they ought to be. But on the other hand, some were as strenuous that Congress should have some power over the subject as the Southern States were that the power should be left in their own hands. The result was that the first clause, as it now stands, was adopted, after an unsuccessful attempt to fix on the year 1800. Mr. G. Morris wished the clause might read, "the importation of *slaves* into *North Carolina*, *South Carolina*, and *Georgia*, shall not be prohibited," etc. This he thought would be most fair, as it was just what was meant. "He wished it to be known also

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What did he contend? How did he attempt to prove it? What did he admit?

Mr. Baldwin's remarks? Mr. Rutledge's remarks?

What division among Northern members?

What other year was attempted to be fixed on than 1808?

What motion did Mr. G. Morris make? What were his reasons? Would not that have been fair and proper?

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

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that this part of the Constitution was a compliance with those States." There appeared to be a dislike to such plain terms, however, and a fear that members and people from those States might not like the change of language. Indeed it is probable that those most earnest for the restrictions of the clause would have been rather ashamed to see their own names or those of their States recorded in such connection. Mr. Morris saved them the trouble of voting against his motion by withdrawing it.

"The privilege of the writ of habeas corpus," etc. This is a writ known in English law, by which the body of a person is obtained, that he may be delivered from false imprisonment, or any illegal detention, or from one court to another. It is considered one of the greatest safeguards of liberty. In England it is issued by any of the four courts of Westminster Hall in term time, or by the Lord Chancellor, or one of the Judges in the vacation. In the United States it is issued by the Judges of the United States Courts. It is directed to the person in whose custody the prisoner is, commanding him to produce the body of the prisoner, with the day and cause of his imprisonment; and if it appear that his detention is illegal, he is set at liberty.

No objection against this clause could be in the minds of the Convention; but as it was possible that in the cases specified a bad use might be made of this writ, a small latitude of discretion was allowed to Congress, with the right to judge when the exigency has arisen in which it may be used.

What objection was made? What is probable?

How did Mr. Morris save them the trouble of voting against his motion?

What is the object of the writ of habeas corpus? What is it considered? By whom is it issued in England? In the United States? To whom is it directed? What does it command?

What if it appear that his detention is illegal? Or that the Court to try him is interested or partial?

What exceptions to this clause?

Who shall judge when the exigency has arisen which requires the suspension of this privilege?

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

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

"No bill of attainder," etc. Bills of attainder are special acts of the legislature, inflicting capital punishment without any conviction in the ordinary course of judicial proceedings. They are an assumption of the Judicial by the Legislative power. The *attainder* is an effect of the judgment or sentence, and appears in this, that the person so sentenced, or *attainted*, can no longer inherit lands from his ancestors, or transmit to his posterity those of which he has possession. *Attainder* is a corruption of blood, and of course divests the person attainted of hereditary honors. It also extends sometimes to posterity. The occasions of it are conviction of treason or felony. The lands of a person attainted revert to the crown. Hence a perpetual temptation in despotic governments, to effect the attainder of rich nobles, in order to secure their estates to the crown.

In other governments, bills of attainder have not been, and perhaps still are not, unfrequent. No doubt exists of the propriety of forbidding them in our Constitution.

Ex post facto laws are such as pronounce an action punishable, or at least illegal, which was not against any law when committed. Laws which mitigate the punishment of a crime, after it is committed, are not *ex post facto*, in the objectionable sense, because, though they are retrospective, and retroactive, they are in favor of the citizen. Some thought the prohibition unnecessary, as there was no lawyer or civilian but would pronounce them void of themselves. Others thought it should be confined to criminal cases, saying that no Legislature ever did or could entirely avoid them in civil cases. Mr. Hamilton's plan contained this prohibition.

"No capitation or other direct tax," etc. This clause is

What are bills of attainder? What assumption are they?
What is attainder? In what does it appear?
What farther definition? What are the occasions of it?
What temptation in despotic governments?
What remark of other governments?
What are ex post facto laws?
What laws are not ex post facto, and why?
What are capitation and direct taxes?

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

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

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

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much like the one which apportions representatives and direct taxes among the States. The object of it is to guard the slave States against being taxed for all their slave population, while but three fifths are represented in Congress. The necessity of direct taxes was anticipated to extinguish the revolutionary debt; and the Convention wished to guard against any State's being taxed in an undue proportion. Mr. Pinckney's plan proposed that direct taxes should be in proportion to the whole number of inhabitants of every description.

"No tax or duty shall be laid on articles exported from any State." On this prohibition we have already spoken.

"No preference shall be given," etc. These prohibitions were made in view of the great difficulties experienced between the States under the Confederation. The regulations of the States with a view to revenue and the favoring of their own ports, produced the difficulties which were among the principal causes of the calling of the Convention. Experience therefore plainly suggested the propriety of a perfect equality in the United States' ports.

"No money shall be drawn," etc. The propriety of this is too plain to require any comment.

What clause does this resemble? What is the object of it?
Why was the necessity of direct taxes anticipated?
What did Mr. Pinckney's plan propose?
What preference is prohibited?
What provision in favor of vessels going from State to State?
In what view were these prohibitions made?
What had produced these difficulties?
What did experience suggest?
Give the clause respecting the drawing of money.
On what grounds were these provisions made?

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and

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"No title of nobility shall be granted," etc. Titles of nobility are abundant in the governments of Europe. They arise from various causes,—principally from the interest of monarchs to secure the influence of eminent men, and from the distinctions enjoyed under the old feudal system. But as neither the General nor State Governments can have any need of them, and they are against the natural equality of men advocated in the whole system, except so much of it as tolerates slavery, they are very properly prohibited in this and the next Section. The other prohibition in this clause is a guard against the corrupting or bribing of United States' officers by foreign powers. Presents have several times been sent by foreign princes to the President of the United States, but they have always been left to the disposal of Congress.

SEC. 10. The object of this Section is to restrain the States from doing what Congress may not do, and to specify what national powers are to be given up by any State in order to be a member of the Confederacy. Where the same prohibitions apply both to the General and State Governments, it is for similar reasons, and the same principles and policy apply in both cases. Where the States are restrained from doing what Congress or the Executive may do, it is because the things are strictly *national* in their character, and

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Repeat the next clause.

Where do titles of nobility abound? From what do they arise? Why are they prohibited here?

Why may not United States' officers accept of presents, etc., from a foreign prince or State?

Have such presents been sent to any officer of the United States? What has been done with them?

Repeat the substance of Sec. 10.

What is the object of this Section?

Where the same prohibitions apply—what are the reasons?

Why are the States restrained from doing what Congress may do?

reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports,

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to allow the States to do them, for instance, to make treaties, declare war, or coin money, would introduce endless confusion, and be utterly subversive of the national compact.

"Bills of credit" are notes issued by the State without any regard to any capital, and intended to circulate as money among the people.

Laws "impairing the obligation of contracts," are not proper bankrupt laws, for the latter are constitutional. A vast deal of discussion has been had, with a view to show the relation to each other of the power to pass bankrupt laws, and the prohibition to make laws impairing the obligation of contracts. Writers say that a bankrupt law, which releases the debtor, on his surrendering all his property, from any farther suit or claim for previous debts, does not discharge the contract, or touch the obligation of it; but what a contract, with all its obligation, can be worth to a creditor, after such an operation upon it, it is hard to say. But it may be sufficient to say here that bankrupt laws do not impair the obligation of contracts, but simply direct what shall be done with a contractor whose ability to fulfil is partly or wholly lost, in which case the obligation, be it ever so valid, is proportionably worthless to the creditor.

"No State shall, without the consent of Congress," etc. The principles of the two last clauses have been generally

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What would be the effect of allowing the States to do them?
What are bills of credit?
What of laws impairing the obligation of contracts?
What discussion has been had? What do writers say? What remark?
What do bankrupt laws simply direct?
State the leading points of the two last clauses.

shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress.

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

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considered already. Some possible cases being in view, in which it might be necessary for a State to lay a duty on articles imported or exported, provision was made to prevent its being done for the purposes of State revenue, or so as to conflict with the powers of Congress or the equality of all United States' ports. Inspection and quarantine laws, which concern only a State, are within the residuary powers of State sovereignty, and may require some tax on commerce. And so with regard to questions of boundary, interest in lands situated within the territories of each other, and perhaps other things affecting the comfort of two or more States, they may, with the consent of Congress, make the necessary regulations with each other, or with a foreign State.

Gold, silver, and *copper*, are coined by the authority of Congress, notwithstanding that legal tenders are confined to gold and silver. In some nations, ancient and modern, small coins have been made of brass. In the ancient republic of Sparta, *iron* was coined. It was secured against counterfeits, or illegal imitations, by making the iron worth less after it was coined than before. In Russia, *platina*, a fine and valuable metal, heavier than gold, has been coined.

What posssible cases were in view? What provision was made for them?

What kind of laws may States pass, which may require a duty?

On what subjects may States, with the consent of Congress, make treaties and compacts?

What metals have been coined by authority of Congress?

Of what have small coins been made in other nations?

What metal was coined in ancient Sparta? How was it secured from counterfeits?

What metal has been coined in Russia?

Article II.

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

Sec. 1. "The Executive power," etc. The subjects of this Section were fruitful sources of debate. Some members of the Convention were strenuous for a plurality in the Executive department, contending that it should consist of three at least. Such persons thought they saw the beginnings of monarchy in a single executive. The mutual counsels and advice of a plural executive would be a guard against precipitancy and rashness. Others thought this plan inconsistent with the firmness, strength, and independence, which seemed essential in the Executive. Some thought an independent Executive to be the "essence of tyranny;" that it ought to be the creature of, and dependent on, the Legislature, and of course should be chosen by that body. With others the independency of the Executive was essential to its value as a branch of the government. Some would have the Executive chosen for life, or during good behavior. This idea startled others as an approach toward an elective monarchy. Instead of it, various terms of the office were proposed, generally from three to seven years. In the course of the debate, even eight, twelve, fifteen, and twenty years, were proposed. The re-eligibility of the Executive was also a matter of much discussion. And the first votes the Convention were able to pass upon the subject were embodied in a resolution, to the effect that the national Executive consist of a single person, to be

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In what is the executive power vested? How long does he hold his office?

What other officer is chosen at the same time, for the same term?

What arguments for a plurality in the executive? What against it?

What did some think of an independent executive? On what would they have it depend? How chosen? How did others view the matter?

How long would some have the President's term of office? Why did this startle others? What were proposed instead? Of what lengths generally? What other terms were named?

What else was a matter of much discussion?

What resolution was passed first on all these matters?

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

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chosen by the Legislature for the term of seven years, and be ineligible a second time.

"Each State shall appoint," etc. The mode of appointing the President was equally difficult to be decided. Besides the method named in the above resolution, an election by the Senate was suggested, an election by the people directly, an election by the State Legislatures, and an election by electors. And in choosing electors, it was proposed that it should be done by the State executives,—by the State Legislatures,—by the people,—by other electors first chosen by the people,—and by other electors taken by lot from the National Legislature. In much of the discussion of this subject, the idea was kept up of a proportional vote of the States, according to their relative population. Various methods were also proposed for deciding the choice when the electors in the first instance failed.

It is impossible to take any thing like a competent view of the arguments offered by the various speakers. The general opinion was that a single Executive was more favorable to responsibility, energy, and dispatch, than a plurality in that department. While the President was to be ineligible a second time, long terms of office were proposed. This ineligibility was supposod favorable to independency in the Executive, by removing all temptation to intrigue and cabal for

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Did not some considerable changes of opinion afterward take place in the Convention?

What else was difficult to be decided?

What methods were proposed of choosing the President? And of choosing electors?

What idea was kept up in this discussion?

How are electors chosen? How many may each State appoint?

Who may not be an elector? Can you think of a good reason for this prohibition?

What was the general opinion of a single executive?

What did the length of term of office depend on?

What argument in favor of ineligibility for a second time? Of re-eligibility?

a re-election. But the view that finally prevailed was that re-eligibility would be a spur to a faithful discharge of duty. This being determined on, a shorter term of office seemed proper.—The choice of a Vice-President occasioned comparatively little debate. All experience shows the conveniency of having a second officer, who shall take the place of the first, in case of his death or legal disability. The necessity of this provision increases with the importance of the office.

With regard to the mode of appointment adopted, we may notice that the objects of the Convention were, first, to secure the independency of the Executive on the Legislature, a strong reason for which was that one House has the power, and the other is the judge, of impeachments. Second, to guard against the ignorance of the people, who, though virtuous enough, were thought to be ignorant of public men and measures, and so liable to be misled by designing men; this object they sought to effect by the intervention of electors. Third, to let the popular voice be heard, nevertheless, as far as it safely might; this they would do by allowing the people to choose their electors. Fourth, to give the States the same relative weight, in the first instance, as they have in Congress; this is done by giving them their quota of electors. And fifth, to take away opportunity for intrigue and cabal, which is aimed at by the restrictions in this, and the regulations as to time, in a subsequent clause.

Some States choose their electors by the Legislature, others by districts, and others by general ticket. It would seem desirable, for the sake of uniformity at least that the Constitution should direct how they should be chosen.

The plan of Mr. Hamilton was that the President should serve during good behavior. The other plans limited his term of office. Mr. Randolph's plan was that he should be ineligible a second time; Mr. Pinckney's, that he should be re-eligible. Mr. Patterson proposed a plurality in the executive department.

Which made a short term of office proper?

What does experience show?

How does the necessity of this provision increase?

Among all the opinions thus far expressed, have you any opinions of your own, as to what course is most eligible? If so, state them, and your best reasons for them.

What was the first object in the mode of appointment, and what strong reason?

Second object, and how sought? Third? Fourth? Fifth?

How do different States choose their electors? What would be desirable?

What is remarked of Mr. Hamilton's plan? The other plans? Mr. Randolph's? Pinckney's? Patterson's?

[The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal

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In ancient Athens, the supreme executive power was held by nine persons, called Archons. They were chosen annually by lot. In Sparta there were two executive magistrates, called kings. They were chosen for life, and acted also with the Senate, and of course must be sixty years of age. The kings of Rome were limited and elective. On the banishment of the kings, the executive power was exercised by the Consuls, who were two in number, and elected annually. The eligible age was forty-three. In modern times, Poland and the papal States have been examples of an elective executive magistracy. The French Directory was a brief modern example of a plural executive. The Convention, and all writers on the science of government, concur in the opinion that a hereditary monarchy is preferable to an elective one.

"The electors shall meet," etc. This clause enclosed in brackets is annulled, and Article 12 of the amendments has been adopted in its place.

How many executive officers in ancient Athens? What were they called? How, and how often, chosen?

How many in Sparta? What called? For what terms chosen? With what body did they act? Their age?

How were the kings of Rome? When the kings were banished, who exercised the executive power? How many and how often chosen? What was the eligible age?

What modern examples of elective executive magistracy?

What opinion in the Convention and among writers, respecting hereditary and elective monarchy?

number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

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

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this

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"The Congress may determine," etc. The most important feature of this clause is that which requires the electors to give their votes on the same day throughout the United States. This, with their wide distance from each other, and dispersion to every State in the Union, prevents the intrigue and faction which might be feared in the Legislature, if the election were given to that body, or among the colleges of electors, if they should meet and vote on different days. While their obligation to vote for one man at least, out of their own States, is a guard against that favoritism which would throw away a vote for the sake of giving it to a citizen of their own State.

"No person except a natural born citizen," etc. This is to

What times may Congress determine?
What day shall be the same throughout the United States?
What is most important in this clause?
What is prevented by this arrangement? What by their obligation to vote for one at least out of their own States?
What citizenship is required for the President?

Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

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

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exclude foreign influence from the government. This is a great fundamental policy of all governments.

"Residence" does not necessarily imply absolute inhabitancy within the United States for the whole time. A man may make a journey abroad, on his own business, or as either a public or private agent, and make such residence abroad as is necessary to execute any reasonable temporary trust, provided that his home and his interest are still in the United States, and not lose or impair his residence. No length of residence abroad in the service of the government of the United States, will affect a man's residence, in the sense of the Constitution. The nature of his business secures his citizenship at home, and prevents his acquiring *residence* or citizenship abroad.

"In case of the removal," etc. Should the President and Vice-President both be unable to exercise the duties of the office of President, the law provides that the office shall devolve on the President pro tempore of the Senate; but if the

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What age? What residence? What reason for this citizenship and residence? What does residence not necessarily imply?

What journey, and for what purposes, may a man take, and not impair his residence? How long may he be absent?

Will residence abroad in United States' service affect a man's residence? Why?

What provision in case of removal, etc., of the President?

What power is given to Congress? What law has Congress made on the subject?

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Senate be without a president pro tempore, it shall devolve on the Speaker of the House of Representatives till the disability be removed, or a President chosen.

Suppose the President and Vice-President should both die or be removed after the dissolution of one House of Representatives, and before the election, or assembling, of a new one, who shall act as President at the opening of the new Congress? For there is by the supposition no President of the Senate, either ex officio, or pro tempore; and the law does not say which Speaker, whether of the old House, already extinct, or of the new one about to be assembled, shall fill the vacant office. In view of such a possibility, the President of the Senate always retires a day or two before the dissolution or adjournment of Congress, and a President pro tempore is chosen, who will preside, if necessary, at the next meeting.

"The President shall, at stated times, receive," etc. No important discussion arose on this clause. But its adoption was remarkable for a motion and a speech by the venerable Dr. Franklin, in favor of paying the President all his necessary expenses, but of allowing him no stipend, fee, or salary, whatever, for his services. His object was to prevent that intrigue for the office, and wanton destruction of character, which would be inevitable, if the Presidency were a post of honor and profit at the same time. He thought it easy to secure the services of the best men without the stimulus of a salary; and as proof quoted the manner in which the arduous and responsible office of commander-in-chief of the armies of the Revolution had been filled, and its duties discharged, without fee or reward.

What supposition is made? Can you answer the question there proposed? Does the case need farther legislation?

What provision for a compensation to the President? What restrictions?

What motion and speech did Dr. Franklin make? What was his object?

Did he think a good officer could be obtained on those conditions? What example did he quote?

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SEC. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

SEC. 2. "The President shall be commander-in-chief," etc. The powers here vested in the President are such as in all Constitutional governments are exercised by the Executive. Some discussion arose on the propriety of establishing a council for the assistance of the President by their opinions and advice. This is provided for by giving him authority to require the opinions of Heads of Departments in the specified cases. The power of reprieve and pardon is an important one; but by common consent an executive power. The case of treason was thought by some to be a necessary exception to the pardoning power. The President himself, or his accomplices, might be the guilty party. To which it was answered that he and they might be guilty of any other crime as well as treason; and that all such cases might be reached by impeachment and subsequent prosecution. But for this it

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What is the oath or affirmation prescribed for the President? What is an oath? What is an affirmation?

Of what is he commander-in-chief?

On what subjects, and of whom, may he require written opinions?

Is he obliged to follow them? Ans. No.

What reprieves and pardons may he grant?

What discussion arose on these matters? How is it provided for?

Why was treason thought to be a necessary exception to the pardoning power? What answer to this? How may such cases be reached?

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they shall think proper, in the President alone, or in the Heads of Departments.

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was necessary to except cases of impeachment from the pardoning power. It is to be noted also that as impeachment extends only to removal from, and disqualification to hold office, there is not the same reason and necessity for the exercise of the pardoning power, as in cases where the life or liberty of a citizen is involved.

"He shall have power, by and with the advice and consent," etc. The discussions in the Convention brought to view several ways of disposing of these important powers. They seemed too much for the exercise of either the Legislature, the Senate, or the President, alone. To give the President the nomination, making the concurrence of the Senate necessary, seemed the best safeguard against the exercise of improper powers by either. The difference in the case of treaties shows their views of the importance of that part of diplomacy. The extension of the appointing power to all cases not otherwise provided for, and the reservation of cer-

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Why was it necessary to except cases of impeachment from the pardoning power?

Why is it less important that cases of impeachment should have the benefit of pardon than where life or liberty is at stake?

What power has the President by and with the advice and consent of the Senate?

What difference between treaties and appointing officers?

What power reserved to Congress?

What did the discussions here bring to view? How did these powers seem?

What seemed the best safeguard against the exercise of improper powers? What shows the importance of the treaty making power?

The President shall have power to fill up all vacancies that may happen during the recess of the Senate,

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tain powers to Congress, are introduced to meet cases which it was impossible to enumerate, foresee, or provide for, in detail.

The general power given the President and Senate to make treaties must of course be so construed as not to authorize any which are inconsistent with other powers, or with the integrity of the national government.

The power to appoint officers has been construed so as to include a power to remove those already in office. But the latter power evidently ought to be exercised conjointly by the executive and the Senate, for the same reasons that the former should. This is a subject on which much excitement has been felt. The practice previous to the year 1829, compared with that since, has led to the expression of an opinion that the Constitution ought to be so amended as to make the appointing power independent of both the Legislative and Executive powers. The object would be to prevent the arbitrary use of the power of the Executive, which threatens to operate directly as a bribe for effecting his own private purposes, and to prove fatal to the personal independence, and freedom of opinion, of public officers, as well as to the public liberties of the country. Those who would advocate such an amendment would give the executive the power to remove any officer for neglect of duty, or improper conduct. Under the Constitution, as it now is, such a power seems necessary, especially during the recess of Congress. On so embarrassing a question no opinion will be offered here; but simply the opinion of Mr. Madison cited, that the wanton removal of meritorious officers would subject the President to impeachment and removal from office.

"The President shall have power to fill up all vacancies," etc. The vacancies here intended are obviously such as

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What are the provisions and reservations of this clause introduced to meet?

How must the power to make treaties be construed?

How has the power to appoint officers been construed?

How ought the removing power to be exercised?

To what opinion has a comparison of practice on this subject led?

What would be the object of amendment?

What does this use of power threaten?

What power would the proposed amendment give the executive?

What opinion of Mr. Madison is cited?

What vacancies has the President power to fill?

by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

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happen in offices which are ordinarily to be filled by the joint power of the President and Senate.

The President cannot *create* an office during the recess of the Senate, and make an appointment to it, without their consent. Neither can he, during the recess of the Senate, make an apportionment to an office created by Congress, and to which no appointment was made during session. The reason is that such vacancies do not happen in the recess of the Senate. But Congress may, by special enactments, authorize him to make such appointments.

SEC. 3. Cases may occur in which the public safety may require the convening of Congress before the stated time. Of these the President is as likely as any one else to judge correctly. The power to adjourn the two Houses, in case of their disagreement about adjournment, will be pretty likely to make them agree.

How long will such commissions last? What vacancies are intended? What appointments can he not make? What is the reason?

Can Congress authorize him to make such appointments?

What information shall he give to to Congress? What shall he recommend? What may he do on extraordinary occasions?

When may he adjourn Congress? And to what time?

Whom shall he receive? What care shall he take? Whom shall he commission?

Is it ever necessary to convene Congress before the stated time? Who can judge when?

What effect will the power to adjourn the two Houses have, should they disagree about adjournment?

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

The President must execute all laws of the United States, whether he may judge them to be expedient or inexpedient, constitutional or unconstitutional. He has no discretionary power here, but must take care that all laws of the United States be faithfully executed, until they are either repealed by Congress, or set aside as unconstitutional by the Judiciary.

The monarchs of France and England have the power to prorogue or dissolve their respective Parliaments at pleasure; but in a case of dissolution they are expected soon to convene a new one. The French king, after dissolving the Chamber of Deputies, must convene another within three months.

SEC. 4. This Section was necessary in order to designate the officers liable to impeachment, the offences which would expose them to impeachment, and the *necessary* consequence of impeachment. The last clause, "or other high crimes and misdemeanors," was added in the course of the discussion, because many of the highest crimes known are neither treason nor bribery. This may be seen in part by the definition of treason in Article 3, Sec. 3. All officers of the United States who hold their offices under the national government, whether their duties are executive or judicial, in the highest or in the lowest departments of government, with the exception of officers in the army and navy, are properly civil officers, within the meaning of the Constitution, and liable to impeachment. Such are Heads of Departments, judges of the supreme and inferior Courts, officers of the revenue and customs, post-masters, etc. etc. Military and naval officers are tried by Courts martial.

Has the President any discretionary power about executing the laws? What if he judge them inexpedient, or unconstitutional?

Who can repeal laws? What power can set aside unconstitutional laws?

What power have the monarchs of France and England? What are they expected to do if they dissolve Parliament?

Why was Sec. 4 necessary? Why was the last clause added? Where may this be seen?

What officers are liable to impeachment? Give examples.

How are military and naval officers tried?

Article III.

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

Art. 3. Sec. 1. The necessity of such a power was so apparent as not to be questioned. The object of having one Supreme Court is uniformity of decisions in all cases. The question on the necessity of inferior Courts we have already noticed sufficiently.

All experience on this subject shows the wisdom of making judges independent. This is well done in the present case by the tenure of their office and the fixed nature of their salaries. Both in monarchies and republics it is the safest barrier that can be erected against the encroachments both of the executive and legislative powers. It need hardly be added, that these principles were distinctly brought to view in all the plans proposed.

Temporary appointments of judges are made by Congress for the *territories* of the United States; because such officers were not contemplated in the Constitution. But the case is altered, and comes within the provisions of the Constitution, when a territory becomes a State.

In what is the Judicial power vested?

What is the term of office of Judges? What is said of their compensation?

What is the object of having one Supreme Court? What does all experience show? How is it done in the present case? Could it be better done?

In what governments is it a safe barrier? Against what?

Do you think such encroachments are likely to happen if not guarded against?

What exception to the tenure of the judicial office? Why this exception?

When and how is the case altered?

SEC. 2. The Judicial Power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to controversies to which the United States shall be a party;—to controversies between two or moreStates;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming lands under grants of different States;—and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both

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SEC. 2. "The judicial power shall extend," etc. It is easy to see a reason for all these provisions, either in the national character of the points to be adjudicated, or in the necessary surrender of them by the States, in order to form a harmonious general government.

The 11th amendment restricts this clause in respect of cases between a State and citizens of another or of a foreign State.

Cases in law are such as require the Court to determine what the law *is*.

Cases in equity are such as require of the Court the proper correction or qualification of law, when the words are too severe or defective; or the extension of the words of the law to cases not expressed, yet coming within the reason and intention of the law.

Cases of admiralty and maritime jurisdiction are such as arise on the high seas.

To what cases does the judicial power extend?
From what does the reason of these provisions arise?
What clause is restricted by the 11th amendment?
What are cases in law? Cases in equity? Cases of admiralty, etc.?
In what cases has the Supreme Court original jurisdiction? In what has it appellate jurisdiction?

as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

"In all cases affecting ambassadors," etc. A court's having *original jurisdiction*, in a given case, implies that the first trial of the case must be by that court. Its having *appellate jurisdiction*, implies that a case must be brought before it, if at all, by appeal from a lower court. Its having jurisdiction *as to law and fact*, signifies its authority to judge of the law applicable to the case tried, or to be tried, and of the facts proved by the testimony.

"The trial of all crimes," etc. Cases of impeachment are provided for in the constitution of the Senate. The violation of the right of trial by jury, and the transportation of persons for trial to distant parts, or beyond seas, were among the gravest charges against the British king, which induced the declaration of independence. They are therefore here expressly guarded against, while, as before, things not to be foreseen or enumerated are left to Congress. These regard crimes committed, for instance, on the high seas, or out of the territorial jurisdiction of any State.

The sixth Article of amendments furnishes some farther directions on the subjects of this clause.

SEC. 3. "Treason against the United States," etc. No conspiracy against the government of the United States, nor even the enlistment of men with a view to its subversion, can

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What is the difference between *original* and *appellate* jurisdiction?
What is meant by a court's having jurisdiction *as to law and fact?*
How shall all crimes be tried, and with what exception?
Where shall trials be holden? When may Congress direct the place?
Where are cases of impeachment provided for?
What charges were made against the British king?
What article of amendments is referred to?
What is treason? What does not constitute treason?

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

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

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constitute the crime of treason. For that purpose there must be an actual assemblage of men for treasonable purposes, or some overt act of adherence to the enemy. And in such case not the leader or prime mover only, but all who assemble, or are accessary to such assembling, or perform any act of adherence to them or to the enemy, which shall mark them as leagued in the general conspiracy, however remote they may be from the scene of action, are guilty of treason.

The principal difficulty arose from the question whether treason against a particular State might not be treason also against the United States, and so liable to double punishment. The difficulty could not be entirely removed; but it was concluded that the Constitution should regard the sovereignty of the United States alone, and provide for the punishment of treason against them only. The requirement of two witnesses was inserted because prosecutions for treason are apt to be violent, which increases the danger of perjury.

"The Congress shall have power to declare" etc. This clause is intended both to give the specified power, and to guard against an undue use of it by a restriction similar to that in Article 1, Sec. 9.

The punishment of treason is death by hanging.

What must take place to constitute treason?
Who are guilty of treason besides the prime mover?
What difficulty arose on this Section?
How did the Convention conclude to do?
Why were two witnesses required to convict of treason?
What punishment may Congress declare? What restriction?
What are the intentions of this clause?
What punishment has Congress annexed to treason?

Article IV.

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

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

Art. 4. Sec. 1. It was evident that to avoid in future the causes of irritation and disquiet which had had an influence in assembling the Convention, and which must of course arise where no confidence is felt and acknowledged by one State in the doings of another, something like this Section must be adopted. But this might have been done, and more have been wanted still. It was necessary that such credit should be given that what was proved or recorded in one State according to its laws, could never be drawn in question in another. All independent nations give credit to each other's acts, when properly attested. But they are not bound or directed by them, or obliged to let them take effect in their own dominions. Leaving it here, then, would leave the States in precisely the condition, in respect of each other's legislation and judicial acts, in which independent nations are. And in order to define the proof of such acts, and the effect which those of one State shall have in another, the power named in the last clause was given to Congress.

Sec. 2. "The citizens of each State," etc. A State may grant exclusive privileges to its own citizens within its own limits, but it cannot make any distinctions between the citi-

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To what shall full faith and credit be given in each State?

What may Congress prescribe by general laws?

What was this clause intended to avoid?

What credit was it necessary should be given?

What do all independent nations do? How are they not bound or directed? or obliged to do?

What would leaving it here do?

For what purpose was the power named in this Section given to Congress?

What privileges are secured to the citizens of each State?

What distinction may a State make? What may it *not* make?

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

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zens of other States. But the rule does not apply to those who are not citizens, either by birth, or due naturalization. Among such, it seems, a State may make distinctions.

This Section was called for in order to give nationality to the whole system; to avoid invidious distinctions which had existed, or might exist; and so to secure an attachment in the minds of the people to the new Government. It seemed to give satisfaction to all the Convention, the first two clauses at least did, except that some of the South Carolina delegation wished a provision which would allow slave-holders to remove into non-slaveholding States with their slaves, and keep possession of that kind of property still. This would be giving the citizens of some States, on removing into others, greater privileges and immunities than were enjoyed by those of the States into which they removed. What they wanted was that on removing to another State, they should enjoy all the privileges they had enjoyed before removal. Probably they had in view only temporary removals, with the intention to return; as excursions to the North on business or pleasure, in which they wished to go and return attended by slaves.

"A person charged in any State," etc. The necessity of this provision is very obvious, in order to facilitate the administration of justice by preventing the criminals of one State from finding refuge or concealment in another. Independent nations sometimes give up refugees from justice to each other, on a request to do so. But they all consider themselves and each other at liberty to do as they may think proper in this matter.

To whom does the rule not apply?

For what purposes was this Section called for? How far was it satisfactory to the Convention?

What did some of the South Carolina delegation wish? What would this be giving? What did they want? What removals had they in view?

What provision with regard to fugitive criminals? Why is this provision needed?

What do independent nations sometimes do? How do they consider themselves at liberty?

No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

"No person held to service," etc. This is the clause under which fugitive slaves are claimed to be delivered up to their owners. Two questions here arise; first, whether this clause would be necessary, or not, provided no slavery existed in the United States; and second, whether or not it does in fact authorize the reclamation of fugitive slaves. In the first place, it seems to be necessary, just as it is, for similar reasons to those which make the immediately preceding clause necessary. It meets the case of fugitive minors, wards, apprentices, and perhaps others, who have entered into voluntary contracts of service. In the second place, the Constitution here speaks of *persons*. But, by slave-law, slaves are not persons. They are merely *property*, i. e. things. The Constitution farther speaks of the "service or labor" as *due* to the claiming party. If it be so, then the supposed fugitive must be the indebted party. But slaves can *owe* nothing. They cannot, by slave-law, be *indebted* to any body. As well might it be said that a horse owes service to his owner. On the whole, it has been maintained, and with plausible arguments, that whatever the *spirit* of the Constitution may do, its *letter* gives no authority for the seizure or surrender of a fugitive slave. But the term *due* is doubtless here used in a liberal sense, merely to designate what a man lawfully claims. If a motion once made had been adopted, which was to require "fugitive slaves and servants to be delivered up like criminals," the case would have been very different.

What provision with regard to fugitives from service or labor?
What claims are made under this clause?
What two questions arise?
Would this clause be necessary if there was no slavery? Why?
What cases does it meet?
In the second place, what does the Constitution here speak of?
What are slaves. by slave-law?
What does the Constitution farther speak of? What then?
What objection to slaves being indebted?
What, on the whole, has been maintained?
What motion was once made?

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

On this motion, Mr. Sherman, of Ct., remarked, as may be remarked on any Constitutional provision for the reclamation of fugitive slaves, that he "saw no more propriety in the public seizing and surrendering of a slave or servant than of a horse."

SEC. 3. "New States may be admitted," etc. Some difficulty arose on this Section. Vermont had already formed a government for herself, though within the asserted limits of New York. The charters of Virginia, North Carolina, and Georgia, extended indefinitely west, and some were for maintaining their jurisdiction to the Mississippi river. It was therefore liable to be disputed whether or not the United States had any lands not included in the limits of any State. As they might, however, have such lands, by the cession of particular States, or otherwise; and as most were desirous that Vermont should come into the confederacy; provision for the admission of new States seemed to be required. The large States were cautious of giving Congress the power to erect new States out of the great western valley, claimed by themselves; while the small States were jealous lest they might be called on to guarantee the claim of the great States to jurisdiction beyond the Alleghany mountains. The Section was therefore framed as it is, in both parts of it, with a view to admit new States, Vermont at least, and others, if

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What was Mr. Sherman's remark?

What are your views on this subject? Ask your teacher for his opinions.

What provision for admitting new States? What conditions for their admission?

What is said of Vermont? What of the charters of certain States? How far would some extend their jurisdiction?

What was liable to be disputed?

Why did provision for new States seem necessary?

Of what were the large States cautious? and the small States jealous?

With what view was the Section framed as it is?

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

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land were found to make them of. And as government is one of the most "needful" of things for all communities, the power to "make all needful rules and regulations respecting the territory and other property of the United States," authorizes Congress to erect territorial governments. But as a proper restriction to this power, it was understood and provided that no territory held by a *bona fide* claim of any State or States, could be erected into a new State without the consent of the Legislatures of each of the claiming States. Should any dispute arise between any State and the United States on a claim to lands, it was intended that the Constitution should not favor either party, but leave the question to the decision of the Supreme Court.

Much has been said about the constitutionality of the admission of new States, particularly out of territory purchased or otherwise obtained of foreign powers. Louisiana, Florida, and Texas, are examples. The Constitution gives the President and two thirds of the Senate the power to make treaties. It does not specify on what subject; it may therefore as well be on the purchase or cession of lands as on any thing else. If so, and the lands named were obtained by treaty with competent and independent powers, it is difficult to see why they may not be erected into States. The only question which can much divide opinions is with regard to Texas. But a treaty with an independent power, by which it is received into the Union, is a purchase of all its lands,—or at any rate, it is but a *treaty* still. If, therefore, Texas had been annexed by treaty, which it was not, its admission would have been constitutional. Besides, treaties for the

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What may Congress do in the territories? What restriction to this power?

How may territorial disputes be settled?

What has much been said about? What examples?

What power has the President and two thirds of the Senate?

On what subject may treaties be well enough made? If so, what then?

What question can divide opinions? How may it be answered?

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

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purchase of lands are constantly made with the Indian tribes, which, so far as the ability to cede lands is concerned, are independent powers. And practice decides that it is constitutional to erect these territories into States. It should be remembered, however, that the constitutionality of a measure decides nothing about either its wisdom or its equity.

SEC. 4. The provisions of this Section were called for by the nature of the case, and by general consent. If the Government could not interfere to prevent monarchy in a State, it might be obliged to remain a passive witness of its own overthrow. This guaranty is a necessary part of the self-preserving power which all societies must have in order to be lasting. It is also due to the several members of the Union, from the nature of the compact entered into, and in view of the rights surrendered by the States to the General Government. Only some question arose about waiting for the application of the Legislature or Executive; for possibly both might be engaged in the rebellion. It was extremely desirable that each State should suppress its own insurrections; and that the General Government should interfere only by request. It was therefore left as it is, with the presumption that the general authority of Congress to suppress insurrections, and the guaranty of a republican form of government, would authorize an interference to suppress any insurrection, violence, or revolution, which was so serious or universal as to prevent any Legislative or Executive application for aid. And the promise of protection is equally good, whether the danger arise from foreign invasion, the invasion of one State by another, or from revolution or violence within a State. It

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What examples of treaties constantly made? What does practice decide? What should be remembered?
What shall Congress guarantee? What protection shall they give?
What makes the provisions of this Section necessary?
On what did a question arise? What was desirable?
On what presumption was the Section left as it is?
Does it make any odds from what source danger may arise?

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

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must be noted, however, that a State has a right peaceably to adopt other forms of *republican* government, and the General Government would be holden to protect it in the enjoyment of such form as its citizens might choose.

Art. 5. It was urged as a reason for this Article, that the Constitution would, on experiment, certainly be found defective, as the Articles of Confederation had been. Such a contingency was generally apprehended, and it was thought better to provide for it in a constitutional way, than to trust the result to causes of which the Convention could form no judgment. But how it should be done was the question. Mr. Randolph's plan excluded all action of Congress in the matter. Messrs. Pinckney and Hamilton had provided in their plans for amendments somewhat in the manner finally

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What is to be noted however?
State the manner in which amendments may be made to the Constitution.
What provisions on the subject restricting the amending power?
What are the clauses referred to?
What was urged as a reason for Article fifth?
What of the plans of Messrs. Pinckney and Hamilton?

adopted. Mr. Pinckney also proposed a periodical revision. It was urged by some that it ought not to depend in any manner on the action of Congress, because it was possible they might refuse their action for the very reason that amendment was necessary. The provision for a Convention seemed to remove such objections.

It is to be noticed with what care the Constitution is guarded from rash and unadvised alterations. This is seen in the great majorities necessary to get amendments proposed, and the still greater majority necessary for their ratification.

This Article is also remarkable for the last effort to secure constitutional protection for the slave-trade. The earliest period that could possibly be fixed on when Congress might abolish that trade, was 1808; and the States interested in the traffic urged the first part of the proviso as a *sine qua non* for their concurrence in the Article. They would not risk the privilege, thus far secured, to import slaves from Africa for the term of twenty years, against the possibility of its being abridged by an amendment of the Constitution within that time. The proviso was extended to the fourth clause by the vigilance, probably, of both slave and free States. The former would guard against being taxed for *all* their slaves; and the latter would have them taxed for as many slaves as they had a representation for in Congress.

The small States contended for the last clause in the proviso.

What farther did Mr. Pinckney propose?

Why did some object to any action of Congress on the matter of amendment? What removed the objection?

What care is to be noticed here? In what is it seen?

For what is this Article remarkable?

How early might Congress abolish the slave-trade?

What States urged the first part of the proviso?

What is a *sine qua non*?

Did they think it a privilege to import slaves from Africa?

Against what would they not risk it?

How was the proviso extended to the fourth clause?

How did each feel on the matter?

What States contended for the last clause in the proviso?

Why should they be careful in that matter?

Is it not strange that men who had just been fighting for liberty, should think it a privilege to enslave the Africans?

Article VI.

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

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

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

Art. 6. All the provisions of this Article are so obviously proper that they called forth no remarkable discussion. All could see that the plighted faith of the nation must not be forfeited; that no change in government could cancel national obligations, annul private rights, or alter the nature of contracts; and that to answer a better purpose than the Articles of Confederation were able to, the Constitution, laws, and treaties of the United States must be the supreme law; of course, that all officers, state and national, should be bound to support the Constitution of the United States. Some were afraid that so great powers in the general Government would

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Why provision for old debts and engagements?
What of the Constitution and laws of the United States?
How must all judges be bound?
How are members of the National and State Legislatures bound? Also all Judges, State and National?
What test shall not be required?
What could all see? Of what were some afraid?

alarm the States; but the Convention saw clearly, what every reflecting, well informed mind will see, that without them the government would have no self-preserving power; that the Constitution and laws would be mere treaties or proposals of treaties; and that the States would be just as dependent on each other's good faith as they had hitherto been. Some also thought that the prevailing liberality of sentiment made the provision with regard to a religious test unnecessary. Fears were felt, however, that such tests might be sought for; and to satisfy these, with the farther and higher purpose of cutting off finally all chance or pretence of an alliance between Church and State, the Convention adopted the clause as it stands.

Mr. Randolph's plan proposed a power in Congress to negative such State laws as contravened the Articles of Union, and that State officers be under oath to support the general Government. Mr. Pinckney also proposed a revisionary and annulling power in Congress over unconstitutional State laws. He also agreed with Messrs. Patterson and Hamilton in proposing that the United States' Constitution, laws, and treaties, be the supreme law of the land. Mr. Hamilton also would have all officers, state and national, under oath to support the United States' Constitution.

We may stop here to express a wonder how the Statesmen of South Carolina could reconcile what is commonly called *nullification* doctrine with their duty under this Article of the Constitution. In the early part of President Jackson's administration, an Ordinance was passed by a Convention in that State, entirely setting aside United States' laws, without asking a decision on their constitutionality by the Judiciary. State officers, following that Ordinance, disregarded United States' laws; and such was the feeling of opposition to them, and devotion to the course advocated by leading politicians in the State, that United States' officers could not execute United States' laws. Under similar impulses, State laws, of that and other slave States, for examining and restricting vessels arriving from free States, could not have their constitutionality tested before the United States' Courts; and agents from one of the free States, charged with the bringing of the

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What would the Constitution and laws be without them?

What high purpose had the prohibition of religious tests?

What did Mr. Randolph's plan propose? Mr. Pinckney's? Mr. Pinckney and Messrs. Patterson and Hamilton's?

What cause of wonder is stated?

Give an outline of the South Carolina Ordinance. What do you think of that Ordinance and the proceedings under it?

Article VII.

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

Done in Convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and deputy from Virginia.

Attest,
William Jackson, *Secretary.*

New Hampshire.	*Massachusetts.*
John Langdon,	Nathaniel Gorham,
Nicholas Gilman.	Rufus King.

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question before the United States' Courts, were obliged to depart, from motives of regard to personal safety.

As another interesting case, it may be well to look a moment at the conduct of the State of Georgia toward the Indian tribes and Christian missionaries, once within her borders. It cannot be unknown that a decision of the Supreme Court was had in the case. And when we consider that treaties made under the authority of the United States are a part of the supreme law of the land, we have a right to ask, and to be answered too, how it came to pass that a treaty, backed by a decision of our highest national tribunal, did not secure those who had trusted to it for protection. And if the decisions of the Supreme Court may be trampled on and disregarded by a member of the Confederacy, to what purpose is it that such a tribunal has been erected?

What other case is mentioned? What do you think of that? How would you answer the question asked?

Repeat Article 7.

Connecticut.
WILLIAM S. JOHNSON,
ROGER SHERMAN.

New York.
ALEXANDER HAMILTON.

New Jersey.
WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

Pennsylvania.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

Delaware.
GEORGE READ,
GUNNING BEDFORD, JR.
JOHN DICKINSON,
RICHARD BASSET,
JACOB BROOM.

Maryland.
JAMES M'HENRY,
DAN. OF ST. TH. JENIFER,
DANIEL CARROLL.

Virginia.
JOHN BLAIR,
JAMES MADISON, JR.

North Carolina.
WILLIAM BLOUNT,
RICHARD D. SPAIGHT,
HUGH WILLIAMSON.

South Carolina.
JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.
WILLIAM FEW,
ABRAHAM BALDWIN.

ART. 7. It seemed so improbable that a universal ratification would ever be attained, without the previous establishment of the Constitution by a part, that no one advocated a waiting for all the States to agree before the new government should go into operation. The plan of Mr. Pinckney alone brought this sanction by a part of the States distinctly to view, though in his plan the number that must agree was left blank.

Why was the ratification of only nine States required?
What did Mr. Pinckney's plan propose?

The declaration that the Constitution was agreed on by the unanimous consent of the *States* present, and the proposal of subscription in witness of that fact, were so framed in order that it might be signed, if possible, by all the Convention present, whether they were or were not satisfied with the result. Every possible appearance of unanimity was thought to be very desirable. But there were three present who could by no means be brought to put their names to the Constitution. Mr. Randolph, of Virginia, the same who had offered a plan, and been forward in endeavors to promote the formation of a Constitution, refused to sign the one agreed on. He objected to the Senate's being made a court of impeachment for trying the Executive; to the want of limitation to a standing army; to the general clause concerning necessary and proper laws; to the want of some particular restraint on navigation acts; to the authority of Congress to interfere on the application of the Executives of the States; to the want of more definite boundary between the General and State Legislatures; also between the General and State Judiciaries; to the unqualified power of the President to pardon treasons; and to the unlimited power of the Legislature to fix their own compensations. He was sure that nine States would never ratify the Constitution; and felt as if he must be free to act according to his own future convictions of duty. He made a motion having in view another general Convention; but it found no support by any State. Col. Mason, of the same State, also refused to sign. He animadverted on the power and structure of the Government as dangerous; and concluded that it would end either in monarchy, or a tyrannical aristocracy; which, he was in doubt, but one or the other he was sure. He could neither sign the Constitution, nor give it his support or vote in Virginia. Finally, Mr. Gerry, of Massachusetts, refused to sign. He gave as reasons, the duration and re-eligibility of the Senate; the power of the House of Representatives to conceal their journals; the power of Congress over the places of election; the unlimited power of Congress to fix their own compensation; that Massachusetts had not her due share of Representatives allotted to her; that three-fifths of the blacks were to be represented, as if they were freemen; that under the power of Congress over commerce, monopolies may be established;

What was done to induce all the members present to sign the Constitution? Why was this?
Did all present sign? What were Mr. Randolph's objections?
What were Col. Mason's views?
What were Mr. Gerry's objections?

and that the Vice-President is made the head of the Senate. He could, however, get over all these, if the rights of the citizens were not rendered insecure, first, by the general power of the Legislature to make what laws they may please to call "necessary and proper;" secondly, to raise armies and money without limit; and thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. With these views he advocated another Convention.

Others expressed great dissatisfaction at the result of the labors of the Convention. And perhaps not a man was suited, nor very nearly so, with the Constitution they had been able to form. But they thought it the best they could obtain. They were satisfied that another Convention could agree no better, and that it was useless to submit it to the people. They would never agree on any thing. Under these circumstances, they determined to take it with all its faults. It was better than nothing,—better than the existing Confederation. And the choice seemed to them to be between the Constitution they had formed, and division, anarchy, or despotism. In order to prevent these results, and not disappoint America and the world, they concluded to give it their best support.

The following are the names of all who were members of the Convention and had taken part in its deliberations, but who never signed the Constitution. Those marked with a star refused to sign, as already noticed. The others were not present at the time of signing.

Massachusetts.—Caleb Strong, *Elbridge Gerry.
Connecticut.—Oliver Ellsworth.
New York.—Robert Yates, John Lansing.
New Jersey.—William C. Houston.
Maryland.—John Francis Mercer, Luther Martin.
Virginia.—*Edmund Randolph, *George Mason, George Wythe, James McClurg.
North Carolina.—Alexander Martin, William Davie.
Georgia.—William Pierce, William Houstoun.

How did he think the rights of citizens were rendered insecure?
Were others dissatisfied? Were any entirely satisfied?
Did they think they could obtain a better Constitution?
What did they think of another Convention?
What did they think of submitting it to the people?
What did they determine under these circumstances?
What did they observe in favor of the Constitution?
What choice seemed to be before them?
To prevent these results, what did they conclude?
Do you think they acted wisely?
What prevented a number of members of Convention from signing the Constitution?

AMENDMENTS.

Article the First.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENTS.

These were proposed and ratified according to the provisions of the fifth Article of the foregoing Constitution.

Article the First.—"Respecting an establishment of religion," etc This clause carries out the principles already brought to view, in the prohibition of any religious test as a qualification for office. It has in view the bigotry and intolerance of sects, when power is in their hands; and is intended as a guard against the repetition of such scenes as even our own early history records, and especially such as are seen in the annals of the old world. All experience shows that true religion flourishes best where the State considers all sects on the same footing, and tolerates and protects all alike. The temptations of political considerations are sure to lower the standard of piety. No human tribunal can judge the heart; of course all are accountable only to God for their religious belief. A man, however, to be safely trusted as a magistrate, should feel his accountability to God for all his actions. Magistrates are required by the Constitution to be under oath or affirmation; but the oath or affirmation of a man who denies the existence of a Supreme Being, or a future state of rewards and punishments, can be worth nothing. It would seem therefore that thus much ought to be required

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Repeat the first amendment.

Where else is the principle of the first clause brought to view? What has it in view? Against what is it a guard?

What does all experience show?

What of the temptations of political considerations?

To whom are all accountable for religious belief?

What should a man feel, to be safely trusted as a magistrate?

What of the oath of a man who denies the existence of a Supreme Being, etc.?

Should such belief be required of public servants?

of public servants by common law, or at least by the moral sense of the community.

"Abridging the freedom of speech," etc. It is not intended that any one may speak, or write, or print, any and every thing he may please, without any responsibility. This would be to make society intolerable, by exposing their dearest interests to irretrievable loss, and placing before the injured the temptation to take private vengeance for injuries which the law would not punish.

It simply means that a man may speak or publish what is true, with good motives and for justifiable ends. This is an essential privilege in a free government. It is just what arbitrary and despotic governments seek to suppress, by forbidding the people to discuss, or call in question, the propriety of public measures, or the characters or conduct of public persons.

A man who speaks or publishes injurious falsehood, or even truth, which the occasion does not call for, and with a manifest intention to injure, that is, with a bad motive, is liable to prosecution for libel.

"The right of the people peaceably to assemble," etc. This is another right which despotic governments often violate. This they do for their own security. But in a free government, or among a people who are not debased by ignorance and servitude, it is hardly necessary to secure the right by express provision.

If the people have a *right* to petition government, it is the *duty* of rulers to receive, hear, and respectfully consider their petitions. And this duty is not at all affected by the nature of their petitions. If their petitions do not, by the nature of them, furnish intrinsic evidence of insincerity, or an intention to impose on the government, rulers ought to presume that they seem important to the petitioners. And hence they are entitled to a respectful reception, reference, and report. We may here compare these principles with the action of Congress on petitions respecting slavery.

Where the moral sense of the community is right, will athiests be trusted as magistrates?

What does French history teach in this matter?

What is not intended by the provision for liberty of speech, etc.?

What effect would such liberty have? What does it mean?

What do despotic governments seek?

When is a man liable to prosecution for libel?

What duty of rulers results from the right of the people to petition the government?

If petitions seem to be sincere, what ought rulers to presume?

To what are such petitions entitled?

What comparison may we here make?

Article the Second.—A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Article the Third.—No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article the Fourth.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Second.—This provision is so plainly proper that its propriety need not be argued. It will be sufficient to contrast it with the practice of despotic governments, who, while they maintain large standing armies, at all times subservient to their pleasure, will not allow arms in the hands of the common people.

Article the Third.—The object of this Article is to secure the perfect enjoyment of that great right of the common law, that a man's house shall be his own castle, privileged against all civil and military intrusion. In time of war it is sometimes necessary to quarter soldiers in the houses of the people; but the requirement of a law in the case, and the farther provision in the last clause of the fifth Article, will secure to the people a compensation for the cost and injury they may sustain.

Article the Fourth.—This seems to be a farther carrying out of the principle of the preceding Article. If a man's house is his castle, and as such protected by law, his personal liberty, and private property, are also sacred. Searches and

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Repeat the second amendment. With what may we contrast it?
Repeat the third article. What is the object of this?
What is sometimes necessary in time of war?
What security have the people in such cases?
Repeat the fourth article.
What principle is here farther carried out?
What results from the protection of a man's house?

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

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seizures must sometimes be made, but no general warrant can authorize them. A warrant, and the complaint on which it is founded, must state not only the name of the party to be searched or seized, but also the time, place, and nature of the offence, with reasonable certainty.

Article the Fifth.—"No person shall be held to answer," etc. Indictments, like warrants, must be founded upon probable causes, clearly defined. And the functions of the grand jury are a farther security to citizens against vindictive prosecutions. The intention is, that the party accused shall have all reasonable opportunity and ability to make his defence. The exceptions arise from the nature of the cases specified, and are otherwise provided for.

"Nor shall any person be twice put in jeopardy," etc. No man shall be tried a second time for the same offence, after conviction or acquittal by the verdict of a jury, and a judgment has passed thereon, for or against him. But he may be tried a second time, if the jury have been discharged without a verdict, as when they cannot agree. He may also have

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What will not authorize searches and seizures?
What is a *general* warrant? Ans. One that does not profess to be upon probable cause.
What must a search warrant state?
Give the substance of the fifth article.
How must indictments issue?
What security afforded by the grand jury?
What is the intention of the first clause?
From what do the exceptions arise?
What is the meaning of the second clause?

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

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a new trial, when judgment upon a verdict has been arrested, and a new trial granted; which, as it is in his favor, does not put him in jeopardy.

"Nor shall be compelled to be a witness against himself," etc. Not only shall no one be subjected to the rack or torture, as in some countries, in order to procure confessions of guilt, but he shall suffer nothing in the nature of fine, imprisonment, or legal disqualification, for that purpose. The accused shall be entitled to all the advantage that entire or partial silence can give him. This privilege is extended also to witnesses as well as criminals at the bar. They are not obliged to testify in such a way as to criminate themselves. The security of life, liberty, and property, against illegal process, is a farther carrying out of these principles.

"Nor shall private property be taken," etc. This is a principle established by common law; but was thought necessary to be expressed in the Constitution, in order to quiet the fears of some, and produce an affection for the government in the minds of all.

Article the Sixth.—This secures against the long and arbitrary imprisonment of suspected persons, summary executions, confiscation of property, and the like, which sometimes happen in despotic governments; also against the forcing of persons to disadvantageous trial, where the power of defence is wanting, either by the denial of counsel for their assistance, or the refusal of witnesses to testify in their favor.

In what cases may one have a new trial?

What is the full meaning of the clause, "nor shall be compelled," etc.?

To what shall the accused be entitled? To whom else is this privilege extended?

How is the principle of the last clause established?

Why was it expressed in the Constitution?

Give the substance of article sixth. Against what does this secure?

Article the Seventh.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article the Eighth.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the Seventh.—"In suits at common law," etc. This amendment was proposed, and universally approved, as obviating a strong objection in the minds of the people against the original Constitution, founded on its want of an express provision securing the right of trial by jury in civil cases. It does not extend to suits in courts of equity, admiralty, or maritime jurisprudence. Neither does it deny the right of trial by jury, in a civil case, in a State court, where the value in controversy is less than twenty dollars.

"And no fact tried by a jury," etc. The common law was brought by our fathers from England. It is distinguished from statute law by its consisting of precedents, rules, and decisions of courts, instead of its having been enacted by Parliament or any other Legislature. It is especially valued both by Britons and Americans; but its peculiarities cannot be farther explained in this place.

Article the Eighth.—It is to be hoped that such a provision could never be needed in a free government. It can do no hurt, however, and expressly guards against the infliction of tortures, maiming, and the like, which is done in some countries; especially the aggravating of the punishment of death, by an increase or prolongation of its pains.

It has not been decided by any United States' court whether the restriction applies to the national government alone, or extends also to the State courts. Its principle ought to be acknowledged, certainly, in all governments. Mutilations, burnings, impalements, etc., show a great degree of savageness in the character of any people.

Repeat article seventh. Why was this article proposed and approved? To what suits does it not extend? What does it not deny?

What is the meaning of the last clause?

Repeat the eighth article. Against what does this guard?

What has not been decided?

Where should the principle of it be acknowledged?

What do cruel punishments show in the character of any people?

Article the Ninth.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the Tenth.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article the Eleventh.—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 the citizens of another State, or by citizens or subjects of any foreign State.

Article the Ninth.—It is a true maxim, properly understood, that an affirmation in particular cases, implies a negation in all others, and *vice versa*. This Article was introduced to prevent any perverse or ingenious misapplication of this maxim.

Article the Tenth.—The principle of this Article could hardly be denied, though no such Article had been adopted. All power being originally in the States, that is, in the people, it follows that what they have not expressly delegated or resigned, remains with them, the original depositaries. And even when any power is granted to Congress, if it is not exclusive, or if there is not a direct repugnancy or incompatibility in the exercise of the same power by the States, it remains with them, as a part of their residuary sovereignty.

Article the Eleventh.—This Article was proposed and adopted as a restriction on Article 3, Section 2, clause 1, of the original Constitution. Several suits were brought against different States; and a decision was made by the Supreme Court that the judicial power extended equally to suits brought *by* and *against* a State. This decision created much

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Repeat article ninth. What true maxim is mentioned? Why was this article introduced?

Repeat article tenth. Is not here a very plain principle?

Where is all power originally? What follows from this? And when does a power remain with the States, even when the same is given to Congress?

Repeat article eleventh. On what original article is this a restriction?

What suits had been brought? What decision of the Supreme Court?

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

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alarm among the States, on account of their liability to be frequently harassed by claims brought against them. To guard against such a contingency, the amendment entirely takes away the judicial power, so far as it regards suits brought against a State, by *citizens*, either of another or a foreign State. But it leaves one State at liberty to bring a suit against another State. When, however, a suit is originally brought by a State against a private person, and a judgment is obtained against him, he may, on an appeal, or a writ of error, have the case re-examined before the Supreme Court. Persons may also be sued for acts done as agents of a State; or a corporation, in which a State has an interest, may be sued, however much the State may be interested in the defence. In such cases the State is not a party, because not named as either plaintiff or defendant, and of course, as such, is exempted from any action.

Article the Twelfth.—This amendment seemed to be called for, for the sake of greater explicitness in the matters provided for. (See Article 2, Section 1, clause 3, of the original Con-

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What was the effect of this decision?

How does the amendment guard against this contingency?

How may a citizen still bring a dispute with a State before the Supreme Court?

How may a case which a State is interested to defend be also tried by the Supreme Court? Why is this?

Can you state any difference between article 12, and the corresponding clause of the original Constitution?

Where is the clause found, of which this takes the place?

Why was this amendment called for?

the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability

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stitution.) But both plans seem to be deficient in two particulars. In the first place, there is no method stated in either by which a contested election should be settled, the regularity or authenticity of returns of electoral votes should be ascertained, directing the manner or circumstances of counting the votes, or by which any question respecting the rights of persons voting, or voted for, should be decided. In the second place, there is no provision in either for a case where there is an equality of votes for more persons than the constitutional number from which the House of Representatives is to make the election. "From the persons having the highest numbers, not exceeding three," the choice is to be made. If it had been *not exceeding three numbers*, the case would have been clear; but it seems plainly to mean *three persons*. Suppose then 300 electoral votes were cast, of

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What is remarked of both plans?
What is mentioned as the first deficiency? What is the second?
What word in addition would have made the case clear?
What does it evidently mean?

of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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which A has 125, B 75, and C and D 50 each. It is plain that A and B are the two first from which a choice must be made; but who shall say whether C or D shall be the third? Other suppositions might be made, involving the difficulty, but this explains the principle of it. Some such case is clearly possible, not to say probable; and should it occur, it is impossible to foresee the event. The first defect noticed might possibly be obviated by law; but to supply the second, nothing seems sufficient but a farther amendment.

Give the supposition intended to explain the matter.
What do you think should be done in such an emergency?
How might these defects be remedied?
Where do the electors meet?
To whom is the certificate of votes to be sent? Who is he?
In whose presence shall the votes be counted?
How many votes are necessary for a choice?
What if there be no choice?
What if no choice is made before the fourth of the next March?
What if there be no choice of Vice-President?
How is the difficulty avoided, that may happen in choosing the President?