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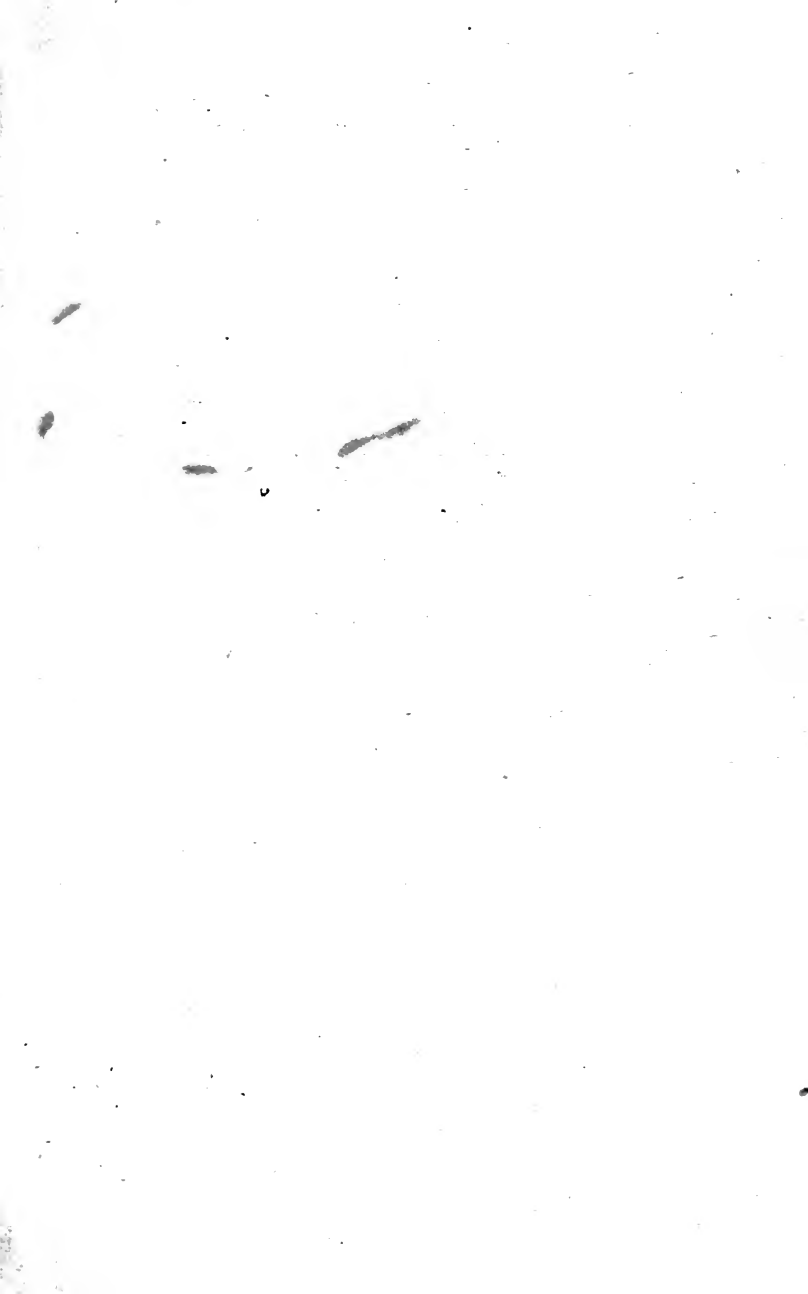
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CALIFORNIA STATE SERIES OF SCHOOL TEXT-BOOKS.

# ELEMENTS

OF

# CIVIL GOVERNMENT.

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THE STATE OF CALIFORNIA—THE UNITED STATES—  
GENERAL PRINCIPLES.



COMPILED UNDER THE DIRECTION

OF THE

STATE BOARD OF EDUCATION.

By

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*Of the State of California, for the People of the State of California.*

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## TO THE TEACHER.

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The plan of this book is that of a gradual development from the known to the unknown, from the near to the distant, from the local to the general, from the concrete to the abstract. The plan is designed, furthermore, to tell only what cannot readily be observed, the purpose being to stimulate observation and inquiry. It is intended that a substantial basis of knowledge shall be gained before general reflections are indulged in. It will be seen, therefore, that the farther we go away from the home of the pupil, the greater the detail of information given him. The questions in the earlier chapters are intended to supply the place of text. The pupil is, accordingly, required by observation and inquiry to build up his own text. The questions in succeeding chapters are more in the nature of questions on the text. The teacher is, of course, expected to enlarge upon these questions indefinitely.

It is assumed that the teacher will be progressively more exacting in the answers required of the pupils. The repetition of questions in the book will thus serve as a means both of review and of extending the knowledge of the subject-matter. Thus, on the topics of elections and suffrage, the pupil will get his first rudimentary knowledge from the election of school trustees; this knowledge will be enlarged and reinforced by successively studying the methods and conditions of elections in city, county, State, and nation. Similarly, again, in regard to taxation. These two topics, especially, are regarded as of fundamental importance, and should be insisted upon and developed with the utmost care, patience, and perseverance. But here, as always and everywhere, the

teacher should conceal the lesson to be taught behind the interest aroused in the subject.

Parts I., II., and III. are designed to give the essential and indispensable knowledge of our government called for by the authorization of this book. They must be studied in course from beginning to end. Part IV. is different in its nature, and is designed, on the one hand, to give a compact and general view of the few subjects that seemed to need such treatment; and, on the other hand, to furnish such comment, reflection, and generalization as all children ought to be trained in after they have obtained sufficient and accurate data. This part may be used or not at the discretion of the teacher. It is thought it may be advantageously studied in the higher grammar grades, in connection with United States history. It has not seemed necessary to add any questions to the chapters in Part IV. The questions here should be such as are suggested by the text, leading out into new fields. Valuable lists of such suggestive questions may be found in Fiske's Civil Government.

Further aid of exceptional value may be had by the teacher in the complete topical outline, in the critical notes, and in the well selected bibliographical references of Mrs. Davidson's Reference History of the United States.

The topical analysis and index of this book will, it is hoped, prove of material assistance in review exercises.

## REFERENCE BOOKS.

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In civil government the books really valuable for school use are very few. It is believed that a greater service will be done by mentioning some dozen books which do not repeat one another, and which will be in constant demand, than to give a large and heterogeneous list. All of the books mentioned below should be in every school building.

For the pupil, Macy and Fiske will be found especially readable. They are well fitted to illustrate given topics. Bryce is conspicuous for its manifold merits. It gives a complete exposition of our government; it embellishes this exposition with felicitous illustrations; and its value is enhanced by its profound generalizations and reflections. There are many chapters, or portions of chapters, which may be read to a class.

Andrews and Cooley are the best manuals on the Federal Constitution: they supplement each other admirably. Andrews is the more elementary, gives more data, and is less legal. Cooley is the more advanced, and is eminently a work on constitutional law. There is scarcely a point that can be raised that will not be found solved in the latter book. Lamphere is a storehouse of useful information in regard to the organization of the various departments of the government. It will be in constant demand in any school-room. Wilson affords views for comparative study of government, and includes an admirable short treatise on the government of the United States. Ford presents thoughtful discussions on the functions of the Federal and State governments, on the electorate, and on the civil service. Mrs. Davidson offers the results of a markedly successful experience as

a teacher of American history in a work which will serve as a valuable guide to all who desire to bring into connection the history and the government of our country. Johnston's book is a masterly sketch: perhaps the best production of the most judicial of the writers on American history. The books by Desty will be found convenient manuals.

## LIST OF BOOKS.

OUR GOVERNMENT: HOW IT GREW, WHAT IT DOES, AND HOW IT DOES IT. By Jesse Macy. Revised edition. Ginn & Company. Boston: 1890.

CIVIL GOVERNMENT IN THE UNITED STATES, CONSIDERED WITH SOME REFERENCE TO ITS ORIGINS. By John Fiske. Houghton, Mifflin & Company. Boston: 1890.

THE AMERICAN COMMONWEALTH. By James Bryce. Two volumes. Second edition. Macmillan & Company. New York: 1890.

MANUAL OF THE CONSTITUTION OF THE UNITED STATES. By Israel Ward Andrews. Revised edition. American Book Company. Cincinnati and New York: 1887.

PRINCIPLES OF CONSTITUTIONAL LAW IN THE UNITED STATES. By Thomas M. Cooley. Little, Brown & Company. New edition. Boston: 1891.

THE UNITED STATES GOVERNMENT: ITS ORGANIZATION AND PRACTICAL WORKINGS. By George N. Lamphere. Lippincott & Company. Philadelphia: 1881.

THE AMERICAN CITIZEN'S MANUAL. By Worthington C. Ford. G. P. Putnam's Sons. New York: 1882.

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THE UNITED STATES: ITS HISTORY AND CONSTITUTION. By Alexander Johnston. Charles Scribner's Sons. New York: 1889.

THE CONSTITUTION OF THE UNITED STATES (with annotations). By Robert Desty. Bancroft-Whitney Company. San Francisco.

THE CONSTITUTION OF CALIFORNIA (with annotations). By Robert Desty. Bancroft-Whitney Company. San Francisco.

THE SCHOOL LAW OF CALIFORNIA. Compiled by the Superintendent of Public Instruction. Sacramento.

CALIFORNIA BLUE BOOK, OR STATE ROSTER. An official Directory of the State and County Governments. Compiled by the Secretary of State. Sacramento.

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PART I.

LOCAL GOVERNMENT.

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CHAPTER I.

GOVERNMENT IN THE SCHOOL DISTRICT.

1. **Government in the Family.**—The family or household is the smallest natural group of human beings. In the household each person has duties to perform for the sake of the household. He must also observe the rights of the other members of the household. Certain persons, by reason of their age and their relation to the family, are entitled to manage the affairs of the household. These rulers of the household have authority to require from the other members the performance of their duties. We all know that the more just and impartial the commands of the parent or other head of the household are, that the more helpful the various members are to one another, and that the more harmoniously they work together, the more perfect and the happier will the household be.

The first germ of government is found in the family; without government it ceases to be a family. And what is true of the family in this respect, we shall find to be true of all society.

2. **Government in the School.**—As the family is the smallest *natural* group provided with the forms of government, so are probably the people of the school district the smallest *civil* group provided with the forms of government. The school itself, with teacher and pupils, is

more nearly like the family than are the people of the school district. But both the school and the school district show the difference between natural government and civil government. In natural government some one or two persons, such as the parents, have their position as managers of the household on account of their relation to the family. In the school the teacher is not the manager of the pupils on account of any tie of kindred. But the people of the school district cause some person to be elected teacher to serve as their agent in the education of the children. And then the teacher, like the parent, has general authority over the pupils. The pupils must obey all the just commands of the teacher.

**3. Government in the School District.**—In the school district, too, there are relations of a similar kind. There are the school trustees, who are elected by the people of the district as their direct agents. They have general authority over the teacher, and authority in certain respects over the children. But most of their authority over the pupils they leave to the teacher to exercise. The people themselves could not teach the children and manage the schools. They, therefore, elect as their agents the school trustees, and the trustees appoint as their agent the teacher.

**4. Necessity of Government.**—We could go on and show that in every group of people there must be that relation between the people of the group and their agents which we call government. We shall find, as we proceed in this study, that the people are divided into groups, called school districts, townships, cities or towns, counties, and States. And we shall find that all the people of this country combined make up the people of the United States, the government of the whole country being the government of the United States. In each group there

are agents to manage the general affairs of the people. This government is necessary if the people wish to live in peace, order, and happiness.

#### Questions on Government in the School District.

Now we wish you to find out all you can about the government of the school district in which you live. If you spend plenty of time on this subject and study it very carefully, you will not have much difficulty in understanding everything that comes afterwards. We shall ask you some questions, and we want you to bring the answers into school and talk them over with the teacher and with the other pupils, until you understand the subject thoroughly.

1. Draw a map of the school district in which you live.
2. Describe the natural features of this district.  
Excellent directions for mapping and describing the school district may be found in the Advanced Geography of the State Series.
3. What is its area in square miles?
4. What are the officers of the school district called?
5. How many are there?
6. What are the names of those now in office, and where do they live?
7. When are trustees elected?
8. For what term, or length of time, are they elected?
9. Who may be elected school trustees?
10. May women be elected school trustees?
11. What notice is given of the election? Describe this fully.
12. Who may vote for school trustees?
13. How do they vote?
14. At what place or places?
15. How are the votes counted?
16. How many votes does it require to elect a trustee?  
(*To the Teacher.*—Conduct an election of school trustees by the pupils, observing all the forms required by law for preparing and posting notices. Conduct, in the same way, an election for raising a tax.)
17. The school trustees when meeting together are called a "board." What is meant by "board" when used in this way?
18. What are the duties of the board of trustees as to teachers? As to children? As to making rules for the schools? As to text-books? As to school money? Etc.
19. What are the officers of the board of school trustees?

20. What are the duties of the president?
21. What are the duties of the clerk?
22. Are the school trustees paid for their services?
23. Is the teacher paid for his services?
24. Are there any other persons connected with your school who are paid for their services?
25. How much money a year does it take to carry on your school?
26. Where does this money come from?
27. How much from each source?
28. How is it decided how much your district shall have?
29. Who decides?
30. Where is this money kept after it is received by the district?
31. How is the portion of the school money which comes from State taxes collected?
32. How is that which comes from county taxes collected?
33. How may the boundaries of your school district be changed?
34. Are there county officers of education?
35. Are there State officers of education?

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## CHAPTER II.\*

### GOVERNMENT IN THE TOWNSHIP.

5. **The Township.**—The township is the next larger geographical division after the school district. And while in California it is of less prominence in the organization of the State than in some other States, nevertheless it has certain officers who are of the greatest importance in preserving peace and order among the people. The duties which these officers have to perform show the necessity of government in directions other than those which we have been studying. In the school district the chief object of government is to improve the welfare of the people by educating the children. In the township the chief object of government is to protect the

\* In city schools it may be found advisable to omit this chapter.

people against wrong-doers and to settle disputes that may arise between individuals.

**Questions on Government in the Township.**

1. In what civil township do you live?
2. Draw a map of it.
3. Describe its natural features.
4. What is its area in square miles?
5. What cities, towns, or villages are there in your township?
6. How many school districts?
7. What are the officers of the township called?
8. How many justices of the peace are there in your township?
9. What are the names of the justices of the peace now in office, and where do they live?
10. When are the justices of the peace elected?
11. For what terms are they elected?
12. Who may be elected justices of the peace?
13. What are the duties of justices of the peace?
14. When and where do they hold court?
15. Are justices of the peace paid for their services? If so, how?
16. How many constables are there in your township?
17. What are the names of the constables now in office, and where do they live?
18. When are they elected?
19. For what terms are they elected?
20. Who may be elected constable?
21. What are the duties of constables?
22. Are they paid for their services? If so, how?

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## CHAPTER III.

### GOVERNMENT IN THE TOWN OR CITY.

6. **General Character of City Government.**—When people are crowded together in large numbers in a town or city, a much more rigid system of government is necessary than in the case of the sparsely settled rural districts. For a rural population is likely to be peace-

able, industrious, and law-abiding. There is not much occasion for conflicts as regards the rights of the citizens. There is not much opportunity for wicked persons to exercise their arts. But this is all changed when we come to a city or town. The presence of a large number of people and of much property, and the crowded condition of dwellings, stimulate vice. The contagion of crime and disorderliness easily spreads. The health of the community, too, is more readily endangered where the population is compact. There is always danger of conflagrations.

**7. Duties of a City Government.**—The duties of a city government, then, are in general such as these: To repress crime and turbulence; to take precautions against epidemics and disease; to make provision against fires; to have the streets well paved and clean; to regulate the traffic and travel in the streets; to construct sidewalks and sewers; to maintain suitable police; to construct and manage almshouses, hospitals, jails; to oversee the public markets; to regulate places of amusement; to provide public parks; to maintain schools; and so on through an almost endless list of things designed to restrain all that is evil, vicious, and lawless, and to promote all that is productive of the peace, comfort, and prosperity of the community. The larger the city, the greater its cares and perils, and the more need of a forcible and energetic government.

**8. City Officers.**—The number and character of the officers in a city or town vary according to the size and population of the place. In the larger cities and towns we find the following classes of officers: (1) A board which has general power to make laws or ordinances for the welfare of the city, the members of which are called councilmen, aldermen, trustees, supervisors, etc. (2) A

mayor, who is the head of the city government, the chief officer for executing the laws. (3) Police Courts, for trying and punishing persons who break the laws. In addition to these there may be a police department, a street department, a fire department, a treasurer, a prosecuting attorney, and many other officials.

#### Questions on Government in Cities and Towns.

If you live in a city or town, answer the following questions with respect to the one in which you live; if not, answer them with respect to one near where you live or with respect to one with which you are familiar. If your answers relate to a smaller town, by-and-by get all the information you can with regard to one of the large cities of California, and make out a list of answers with respect to that city.

1. Draw a map of the city or town in which you live, or of one which is near you, or of one with which you are familiar.
2. How many inhabitants has this city or town?
3. How many children between the ages of five and seventeen?  
Why is it of interest to know this?
4. How many school-houses? How many teachers?
5. How many persons entitled to vote?
6. How many wards or precincts? In which one do you live?
7. Give an account of the city under the following heads, naming the chief persons in office and giving their residences:
  - (a) The mayor;
  - (b) The fire department;
  - (c) The police department;
  - (d) The street department;
  - (e) The water system;
  - (f) The lighting system;
  - (g) The public parks;
  - (h) The public libraries;
  - (i) The hospitals;
  - (j) The almshouses;
  - (k) The jail;
  - (l) Any other public institutions or buildings;
  - (m) The council;
  - (n) The judges;
  - (o) The assessor;
  - (p) The tax collector;
  - (q) The treasurer.

8. Draw a plan of the city hall. Name all the officials who have offices in the city hall, and tell what room each occupies.
9. How is the money raised to carry on the city government?
10. How much a year does it take?
11. What officials are elected by the people? What is the term of each?
12. When do these elections take place?
13. How many polling or voting places are there?
14. Who may vote at these elections?
15. May women vote?
16. May women hold any offices in the city government?
17. What officers are appointed (not elected), and by whom? What difference in meaning is usually made between "appointing" and "electing?"

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## CHAPTER IV.

### GOVERNMENT IN THE COUNTY.

9. **The County.**—As each one of us lives in a school district and in a township, so each one lives in a county. A county is usually made up of many school districts and townships. Sometimes, when the population is very large and dense, constituting a great city, the school district, the township, the city, and the county, all coincide and cover the same area.

10. **County Officers.**—Each county has a complete set of officers, who have all the powers necessary for carrying on the affairs of the county. There is, in the first place, a board of general superintendence, with the power of making laws, called a board of supervisors. Then there are the following officers, whose duties are chiefly in executing and administering the laws: Treasurer, clerk, auditor, recorder, surveyor, assessor, tax collector, superintendent of schools. And thirdly, there are the judicial officers: Superior judge or judges, sheriff, district attorney, coroner, public administrator.



All these officers are elected by the voters of the county, and hold office, except the superior judge, assessor, and superintendent of schools, for two years. The term of office for the superior judges is six years, for assessor and superintendent of schools, four years.

**11. Board of Supervisors.**—Each county board of supervisors consists of five members. The county is divided into five supervisorial districts as nearly equal in population as possible. One supervisor is elected by the voters of each district, and he must himself be a voter of that district.

The powers of the board of supervisors are: To superintend the conduct of the county officers; to divide the county into townships, and into school, road, and other districts; to establish election districts, supervise elections, and canvass election returns; to establish and maintain roads, bridges, and ferries; to provide for the poor and sick; to levy taxes; to equalize assessments; to grant licenses; to grant franchises, etc.

**12. Treasurer and Auditor.**—The treasurer receives and pays out moneys on account of the county, while the auditor examines and adjusts its fiscal concerns.

**13. Clerk.**—The county clerk acts as clerk of the board of supervisors and of the Superior Court; he keeps all county books, papers, and records; he keeps a public record of all suits brought in the Superior Court. He issues certificates, such as marriage licenses; he usually attends to the registration of voters.

**14. Recorder.**—The county recorder is an important officer in all the American States. It is a feature of our system of law that a public record is kept of all the more important transactions relating to land, or real property. The evidences of these transactions, such as deeds and

mortgages, are kept in carefully indexed books in the recorder's office.

15. **Assessor and Tax Collector.**—It is the duty of the assessor to appraise the value of all property, both personal and real, for tax assessment. The taxes of each county are determined after the amount to be raised for the State has been fixed. The rate of taxation is determined by dividing the amount of the tax by the valuation of the property on which the tax is to be levied. The quotient is the rate.

The duty of the tax collector is to receive from the property owners the tax which has been assessed upon their property. Such taxes as are not paid by the time appointed by the law are declared by the tax collector to be delinquent. Between the day of becoming delinquent and another fixed date, a certain percentage is added to the tax. Then, at the latter date, a public auction is held; and so much of each piece of property having delinquent taxes as will satisfy the tax upon it is sold to the highest bidder. At any time within six months after such sale, the owner of the property may "redeem" or recover it from the purchaser by paying the amount of the taxes with fifty per cent added.

16. **Surveyor.**—The surveyor is a public official who makes such surveys of land as may be required of him by order of court or of the board of supervisors, or upon the application of any private person. He receives fees for such work as he may do, but no salary.

17. **Superintendent of Schools.**—It is the duty of the school superintendent to supervise the schools of his county; to apportion the school moneys among the districts of the county; to preside at teachers' institutes; to enforce the county course of study; to issue temporary certificates to teachers.

18. **Sheriff.**—The sheriff is one of the most responsible of the county officials. His duties are of the highest importance to the community. They are: To preserve the peace; to arrest any person who has committed a public offense; to have charge of the county jails and of the prisoners. He is the executive officer of the courts, and serves all their papers and orders in both civil and criminal cases. He may call upon the citizens to assist him in the execution of his duties. Because of the danger and importance of his office, he is the highest paid county official.

19. **District Attorney.**—The district attorney is the public prosecutor of the county. As such it is his duty to attend the sittings of the Superior Court, and there conduct, on behalf of the people, all prosecutions for public offenses. It is his duty to institute proceedings before a magistrate for the arrest of any person charged with, or reasonably suspected of, a public offense. It is his duty to draw up all indictments, that is, papers formally accusing persons of crime, and to defend all suits brought against the State or against his county; also, to conduct all civil suits on behalf of the county. He must give legal advice to county officers when requested.

20. **Coroner.**—The principal duty of the coroner is to hold an inquest over the body of any person who has come to a violent death, or a death from an unknown cause. For the purpose of such an inquest, he summons a jury of twelve citizens. It is the duty of the coroner's jury to render a verdict giving the results of their investigation as to the cause of the death. Such a verdict may be the means of bringing murderers to justice.

The public administrator takes charge of the estates of deceased persons, for the settlement of which the law has not otherwise provided.

21. **Superior Judges.**—It is the duty of the superior judges to preside over the Superior Courts that are provided for each county.

**Questions on Government in the County.**

1. Draw a map of the county in which you live.
2. Describe the natural features of this county.
3. What is its area in square miles?
4. How many civil townships in this county?
5. How many school districts?
6. How many inhabitants? Number of voters at last election?
7. Name the cities, towns, and villages.
8. Where is the county court-house?
9. Give a list of the county officers, with the names and residence of the persons now in office.
10. Name all the officers of the county who have offices in the court-house.
11. What are the duties of each county officer? What officers are paid by fees? What by salary? What by both? What is the salary of each officer receiving a salary?
12. For what term is each county officer elected?
13. Are there any appointed county officers?
14. When do the elections take place?
15. May women vote?
16. May women hold any of the county offices? If so, which?
17. How is the money raised to carry on the county government?
18. How much a year does it take?
19. What is the assessed valuation of all the property in the county?
20. When are taxes in your county payable?
21. To whom are they payable? By whom are they payable?
22. What are taxes? Are they necessary?
23. What is meant by "delinquent" taxes?
24. When do county taxes become delinquent?
25. What penalty does the taxpayer have to pay for allowing his taxes to become delinquent?
26. If taxes are not paid within a given time after they become delinquent, what is done to collect them? How may the owner redeem his property after it has been sold for taxes?
27. In which supervisorial district do you live?
28. Describe any county buildings in your county, such as high schools, poor-houses, hospitals, jails, etc.

## PART II.

## THE STATE GOVERNMENT.

## CHAPTER V.

## GOVERNMENT IN THE STATE.

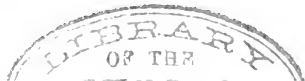
22. **The State.**—We come now to the study of that great political organism called the State. The study of the government of the State of California will serve to give us a general knowledge of the government of any State in the Union. We have successively gone through an examination of the school district, the township, the city or town, and the county. As the township is made up of several school districts, and the county of several townships, so the State is made up of many counties.

23. **Government of the State.**—The government of the State of California is provided for in its Constitution. The Constitution of a State is formed by delegates of the people of the State meeting in a convention. After the Constitution is thus formed, it is submitted to the voters of the State, and, if adopted by them, becomes the fundamental law of the State. It establishes the framework of the government. It provides for a body, called the Legislature, to make laws for the people of the State.<sup>1</sup> It provides for executive officers, the Governor and certain other officials, to see that the Constitution and laws of the State are properly carried out.<sup>2</sup> And it provides for courts of justice to decide disputes between individuals and to interpret and apply the law.<sup>3</sup>

<sup>1</sup> Cal. Const., Art. IV., Sect. 1.

<sup>3</sup> Cal. Const., Art. VI., Sect. 1.

<sup>2</sup> Cal. Const., Art. V., Sect. 1.



**Questions on the State.**

1. Draw a map of the State of California.
2. Mark off and name the counties.
3. What is the area of California in square miles?
4. How many inhabitants has it?
5. How many persons voted at the last State election?
6. What city is the capital?

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## CHAPTER VI.

### THE STATE LEGISLATURE.

**24. Composition of the Legislature.**—The Legislature of California is divided into two different bodies, called “houses,” the Senate and the Assembly.<sup>1</sup> The members of each of these houses must have been citizens and inhabitants of the State for three years and of the district for which they may be chosen one year next before their election.<sup>2</sup> Assemblymen are elected for two years,<sup>3</sup> Senators for four years.<sup>4</sup> The Senate consists of forty members, the Assembly of eighty.<sup>5</sup> The election of Senators is so arranged that twenty are elected every two years.<sup>6</sup>

The State is divided every ten years, on the basis of the United States census, into forty senatorial and eighty assembly districts. These districts must be as nearly equal in population as possible, and must be formed of contiguous territory. Each senatorial district is entitled to choose one Senator, and each assembly district one Assemblyman.<sup>7</sup>

**25. Organization of the Legislature.**—Each house regulates the form of its own proceedings, judges of the

<sup>1</sup> Cal. Const., Art. IV., Sect. 1.

<sup>2</sup> Cal. Const., Art. IV., Sect. 4.

<sup>3</sup> Cal. Const., Art. IV., Sect. 3.

<sup>4</sup> Cal. Const., Art. IV., Sect. 4.

<sup>5</sup> Cal. Const., Art. IV., Sect. 5.

<sup>6</sup> Cal. Const., Art. IV., Sect. 5.

<sup>7</sup> Cal. Const., Art. IV., Sect. 6.

qualifications, elections, and returns of its own members. Each house chooses its own officers,<sup>1</sup> except that the Lieutenant-Governor of the State is the presiding officer of the Senate.<sup>2</sup> The Assembly chooses one of its own number for its chairman, who is known as the "Speaker."

26. **Standing Committees** are appointed in each house for the speedier discharge of business. Every bill is, as a rule, referred to one of these committees for consideration. There is a committee for each of the more important branches of business coming before the Legislature. The committees of the Senate are, under a rule of that body, appointed by the presiding officer, but this rule may at any time be changed and the appointment of committees be made by the Senate itself. The committees of the Assembly are appointed by the Speaker.

27. **Vacancies** in either house are filled by elections which are called by the Governor.<sup>3</sup>

28. **Privileges of Members of the Legislature.**—Members of the Legislature are, in all cases except when they commit treason, felony, or breach of the peace, privileged from arrest during the session of the Legislature and for fifteen days before the commencement and after the termination of the session. During the same period they are exempt from having court papers served on them in any civil suit.<sup>4</sup>

29. **Quorum.**—In order that either house of the Legislature may transact any business, there must be present at the session a majority of its members. This working-force of a legislative body is called a *quorum*. A smaller number than a majority may adjourn from day to day and may compel the attendance of absent members.<sup>5</sup>

<sup>1</sup> Cal. Const., Art. IV., Sect. 7, 9.

<sup>4</sup> Cal. Const., Art. IV., Sect. 11.

<sup>2</sup> Cal. Const., Art. V., Sect. 15.

<sup>5</sup> Cal. Const., Art. IV., Sect. 8.

<sup>3</sup> Cal. Const., Art. IV., Sect. 12.

30. **Process of Law-making.**—A “bill,” that is, a draft of a proposed law, may be introduced into either house by any one of its members. It is then referred for consideration to the appropriate committee. This committee, if favorable to the bill, reports it back to the house—the Senate or Assembly, as the case may be—recommending its passage. It must then be printed and read three times on separate days. But the house may, by a two-thirds vote, order the three readings on one and the same day. The bill may, by vote of the house, be “amended” by adding to, striking out, or altering any of its provisions. After the third reading, the bill, printed, together with all amendments, for the ready use of the members of the house, may be “passed” if a majority of the members elected vote “yea.” After a bill has passed one house it is sent to the other and goes through a like process.<sup>1</sup>

After having passed both houses of the Legislature, the bill must be sent to the Governor. He is allowed ten days during which he may consider the bill. During this period, if he approves and signs it, it becomes a “law.” But if he disapproves it and refuses to sign it, he must return it, with a statement of his objections, to the house in which it originated. This disapproval is called a “veto.” The bill thus vetoed is then reconsidered by the house to which it has been returned, and if it passes by a two-thirds vote of the members elected it is sent to the other house, and if it receives a like vote there, it becomes a law, notwithstanding the Governor’s veto. If it fails to receive a two-thirds vote, in either house, it does not become a law.

Again, if a bill, having passed both houses and having been duly sent to the Governor, shall not, during the session, be either signed by him or returned to the Legislature with his objections within ten days after having

<sup>1</sup> Cal. Const., Art. IV., Sect. 15.



been presented to him (Sundays excepted), it shall become a law without his signature.

But if, perchance, the Legislature shall adjourn within these ten days and thereby prevent the Governor from returning the bill after the full time allowed him for deliberation, the Governor may decline to sign the bill, and the bill then fails to become a law. This is called a "pocket veto." If, however, during the ten days allowed him and after the adjournment of the Legislature, he does sign it, the bill thus signed becomes a law.<sup>1</sup>

**31. Meetings of the Legislature.**—The Constitution requires the Legislature to meet every two years, namely, on the first Monday in January. And with a view to restricting the length of the session, it provides that the members shall not receive pay for a longer period than sixty days. The Governor may, on extraordinary occasions, call special meetings of the Legislature.<sup>2</sup>

**Questions on the State Legislature.**

1. What are the two "houses" of the Legislature called, respectively?
2. How many members are there in the Senate?
3. Who may be elected Senators?
4. For how long are they elected?
5. When are they elected?
6. What compensation do they receive for their services?
7. Who vote for Senators?
8. In what senatorial district do you live? Draw a map of it.
9. What is the name of the Senator now in office from your senatorial district and where does he live? With what political party is he connected?
10. How many members are there in the Assembly?
11. Who may be elected Assemblymen?
12. For how long are they elected?
13. When are they elected?
14. What compensation do they receive for their services?
15. Who vote for Assemblymen?

<sup>1</sup> Cal. Const., Art. IV., Sect. 16.      <sup>2</sup> Cal. Const., Art. IV., Sect. 2.

16. In what assembly district do you live? Draw a map of it.
17. What is the name of the Assemblyman now in office from your assembly district and where does he live? With what political party is he connected?
18. Describe the organization of the Senate.
19. Describe the organization of the Assembly.
20. What position has the Lieutenant-Governor in the Senate?
21. What position has the Speaker in the Assembly? What do you mean by "chairman?"
22. What are the duties of the Standing Committees? How are they elected or appointed?
23. How are vacancies in either house filled?
24. What are the privileges of members of the Legislature—In criminal cases? In civil cases? What do you mean by the terms "criminal" and "civil"? Are members privileged from arrest when they commit treason, felony, or breach of the peace? What do you mean by these terms? For what time are members privileged?
25. What is meant by a quorum? What constitutes a quorum in the Senate or Assembly? Mention any cases in which a larger number than a majority must be present and vote. What powers has a less number than a majority?
26. Describe the way laws are made.
27. What is meant by "veto?" Who has the power of veto? What is a "pocket veto?"
28. When and how often does the Legislature meet?
29. Where does it meet?
30. How long is its regular session?
31. When and by whom may "special" sessions be called?
32. Why should a legislative district be formed of contiguous territory?
33. What is meant by a "standing committee?"
34. What is the difference between a standing and a special committee?
35. What is the difference between a bill and a law?

## CHAPTER VII.

## THE STATE EXECUTIVE DEPARTMENT.

**32. Officers Composing the Executive Department.**—The chief administrative officers, constituting what is commonly called the executive department of the State, are the Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, and Superintendent of Public Instruction. All of these officers are elected by all the voters of the State, and hold office for four years, their terms beginning on the first day of January subsequent to their election.<sup>1</sup>

**33. Character of the Executive Department.**—The chief executive officer of the State is the Governor.<sup>2</sup> He is the most conspicuous of the State's officials; he represents the unity of the State. His duties, however, are rather those of general information, advice, and superintendence than of execution. The real carrying out of the laws depends more on the officials of the counties, cities, and towns, elected severally by the people of such local divisions, than on any State officials.

**34. The Governor.**—The qualifications established by the Constitution of California for the Governor are that he shall be at least twenty-five years of age, and shall have been a citizen of the United States and a resident of California for five years.<sup>3</sup>

**35. Powers and Duties of the Governor.**—The powers and duties of the Governor may be placed under five heads: (1) As chief executive, it is his duty to see that the laws are faithfully executed.<sup>4</sup> He performs all the executive business that has to be transacted with the

<sup>1</sup> Cal. Const., Art. V., Sect. 2, 17.

<sup>3</sup> Cal. Const., Art. V., Sect. 3.

<sup>2</sup> Cal. Const., Art. V., Sect. 1.

<sup>4</sup> Cal. Const., Art. V., Sect. 7.

officers of government, both civil and military. He may call for information in writing, respecting the conduct of their offices, from the officers of the executive department.<sup>1</sup> Upon the request of a Governor of another State he issues his order for the return of any criminal who may have fled from justice. This is called an order of extradition.

(2) He is to a certain extent associated with the Legislature. His assent is necessary for giving legal force to an Act of the Legislature, and his veto prevents such legal force unless the Legislature is able to command a two-thirds majority in overriding his veto.<sup>2</sup> He is empowered to convene the Legislature in special session when in his opinion there is an occasion demanding their attention.<sup>3</sup> In case of disagreement between the two houses with respect to the time of their adjournment, he may adjourn the Legislature to such time as he thinks proper, provided that such time is not beyond the date fixed for the meeting of the next Legislature.<sup>4</sup> It is, moreover, his duty to communicate by "message" with the Legislature at every session the condition of the State and to recommend such measures as he may deem expedient.<sup>5</sup>

(3) He is commander-in-chief of the militia, the army and navy of the State.<sup>6</sup> This duty may be called into activity in case of foreign invasion or of serious internal disorder.

(4) It is the duty of the Governor to keep the Great Seal of the State, and with it to seal, afterwards signing, all commissions issued in the name of the people of the State.<sup>7</sup> It is also his duty, when any office may become vacant and no mode of filling it is provided by

<sup>1</sup> Cal. Const., Art. V., Sect. 6.

<sup>2</sup> Cal. Const., Art. IV., Sect. 16.

<sup>3</sup> Cal. Const., Art. V., Sect. 9.

<sup>4</sup> Cal. Const., Art. V., Sect. 11.

<sup>5</sup> Cal. Const., Art. V., Sect. 10.

<sup>6</sup> Cal. Const., Art. V., Sect. 5.

<sup>7</sup> Cal. Const., Art. V., Sect. 13, 14.

the Constitution or by law, to fill the vacancy himself by granting a commission which will expire at the end of the next session of the Legislature, or at the next election by the people.<sup>1</sup> He nominates, subject to approval by the Senate, all State officers not elected by the people.

(5) He has power to grant pardons, reprieves, and commutations of sentence after conviction, in all cases except treason and impeachment. In cases of treason he is given authority to suspend execution of sentence until the meeting of the Legislature, which body may then grant a pardon or else affirm the sentence.<sup>2</sup>

**36. The Lieutenant-Governor** must have the same qualifications as the Governor. He is elected at the same time, in the same way, and for the same term, as the Governor. In case of a vacancy in the governorship, the Lieutenant-Governor becomes Governor. His only duty as Lieutenant-Governor is to preside over the deliberations of the Senate, in which body he has a vote only in case of a tie.<sup>3</sup>

**37. Secretary of State.**—It is the duty of the Secretary of State to keep a record of the official acts of the legislative and executive departments of the government; to affix the Great Seal of the State, of which he is custodian, to all commissions, pardons, and other public instruments to which the official signature of the Governor is required; to record all conveyances to the State, and all articles of incorporation filed in his office, and all official bonds; to publish the Acts of the Legislature and to distribute them in accordance with the law; to make a detailed report biennially to the Governor of all his official actions during the preceding two years.

<sup>1</sup> Cal. Const., Art. V., Sect. 8.

<sup>3</sup> Cal. Const., Art. V., Sect. 15.

<sup>2</sup> Cal. Const., Art. VII., Sect. 1.

38. **The Controller.**—It is the duty of the Controller to superintend the fiscal concerns of the State; to keep all accounts in which the State is interested; to audit all claims against the State; to issue warrants for all legal disbursements of money from the State treasury; to give information, when requested, to the Legislature or to either house relating to the fiscal affairs of the State or the duties of his office; to make to the Governor a biennial report of the funds of the State, of its revenues, and of the public expenditures during the preceding two years, together with an estimate of the same for the ensuing two years.

39. **The Treasurer.**—The duty of the Treasurer is to keep all moneys belonging to the State subject to the warrants of the Controller; to give information, when requested, to the Legislature or to either house as to the condition of the treasury or the duties of his office; to make a biennial report to the Governor of the exact balance in the treasury to the credit of the State, together with a summary of the receipts and expenditures during the preceding two years.

40. **The Attorney-General.**—It is the duty of the Attorney-General to attend the Supreme Court and prosecute or defend all cases to which the State or any officer thereof, in his official capacity, is a party, and all cases in which any county is a party, unless the interests of the county, or one of its officers, in his official capacity, is adverse to the State. The Attorney-General is the only person entitled to represent the people in the Supreme Court. It is his duty to exercise supervision over district attorneys, and, when required by the public service or directed by the Governor, to go to any county in the State and assist the district attorney in the discharge of his duties. It is his duty to give his opinion

in writing to the Legislature or to either house, to the Governor, Secretary of State, Controller, Treasurer, Superintendent of Public Instruction, trustees of State institutions, and to any district attorney, upon any question of law relating to their respective offices; to make a biennial report to the Governor on the affairs of his department.

**41. The Surveyor-General.**—It is the duty of the Surveyor-General to keep a register which will show all important matters relating to the public lands of the State; to survey and mark, when required, the boundary lines of counties, cities, villages, and towns; to make biennially to the Governor a report which shall show: (1) The condition of surveys required of him by law; (2) the quantity and condition of the lands belonging to the State; (3) the quantity of arable and grazing land in each county; (4) the number of horses, cattle, sheep, and swine in each county; (5) the quantity of agricultural and horticultural productions of the State during the preceding two years, together with a discussion of the diseases affecting the same; (6) information regarding mineral lands and mineral productions in each county; (7) all facts likely to promote the development of the resources of the State.

**42. The Superintendent of Public Instruction.**—The State Superintendent of Public Instruction has general oversight of the educational work of the State. It is his duty to collect information relating to the public schools; to ascertain the number of school children in each district, the number of teachers, the amount yearly expended on schools, and to collect various other statistical and useful information pertaining to public education. He apportions semi-annually, the State school moneys among the counties. He makes a biennial report of these matters to

the Governor, suggesting improvements in the management of the public schools.

**Questions on the State Executive Department.**

1. Who is the chief executive officer of the State?
2. Who may be elected Governor?
3. For how long is he elected?
4. When is he elected?
5. What is his salary?
6. Who may vote for Governor?
7. What is the name of the present Governor and where is his home? With what political party is he connected?
8. What are the duties of the Governor?
9. Answer the same questions (2-8) with respect to each of the following officials:
  - (a) The Lieutenant-Governor;
  - (b) The Secretary of State;
  - (c) The Controller;
  - (d) The Treasurer;
  - (e) The Attorney-General;
  - (f) The Surveyor-General;
  - (g) The Superintendent of Public Instruction.

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## CHAPTER VIII.

### THE STATE JUDICIAL DEPARTMENT.

**43. The Judicial Power.**—The judicial power of the State is vested by the Constitution in justices of the peace, Superior Courts, and a Supreme Court. The Legislature is also authorized to establish inferior courts in any incorporated city or town, or in any city and county. The Senate, when sitting as a court of impeachment, is to be included within the judicial department of the State.<sup>1</sup>

**44. Justices of the Peace.**—The lowest grade of courts is that of a justice of the peace. Justices of the peace

<sup>1</sup> Cal. Const., Art. VI., Sect. 1.



are elected by the voters of a township, or of an incorporated city or town, or of a city and county. Their jurisdiction, or authority, is confined to the district for which they are elected. The number for each district is determined by the Legislature.<sup>1</sup>

45. **Superior Courts.**—The next higher in the regular scale of courts are the Superior Courts. These courts might be styled "County Courts," for there are for each county\* in the State from one to twelve such courts, the number varying according to the population and the amount of legal business in the county. The Superior Judges are elected by the voters of the county at the general State election, and hold office for a term of six years.<sup>2</sup>

46. **The Supreme Court.**—The next in the scale and the highest in the State series is the Supreme Court. The Supreme Court consists of a Chief Justice and six Associate Justices. All the Supreme Court judges are elected at the general State election by the voters of the State, and hold office for a term of twelve years.<sup>3</sup>

47. **The Senate as a Court of Impeachment.**—When the Assembly considers that any one of the chief executive officers of the State, or a judge of the Supreme Court or of a Superior Court, has been guilty of any misdemeanor in office, it sends *articles of impeachment* against such official to the Senate. The Senate then convenes as a court to try the impeachment. The Senators are placed under oath or affirmation. A concurrence of two thirds of all the members elected to the Senate is necessary to

\* Except that there is only one Superior Judge for the two counties of Sutter and Yuba.

<sup>1</sup> Cal. Const., Art. VI., Sect. 11.

<sup>2</sup> Cal. Const., Art. VI., Sect. 5-10, 12-15, 17-20, 22-24.

<sup>3</sup> Cal. Const., Art. VI., Sect. 2-4, 12-18, 21-24.

convict the person impeached. The judgment of conviction carries with it removal from office and disqualification to hold any office of honor, trust, or profit under the State. Whether convicted or acquitted by the Senate, the person is liable to indictment, trial, and punishment in the ordinary courts according to law.<sup>1</sup>

**Questions on the State Judicial Department.**

1. What are the functions of courts?
2. How many Justices or Judges in the State Supreme Court?
3. For how long are they elected?
4. When are they elected?
5. What is the salary of each?
6. Who may vote for Justices of the Supreme Court?
7. What are the names of the present Justices, and who is Chief Justice?
8. What is an impeachment?
9. Who constitute the State court of impeachment?
10. Describe the trial under articles of impeachment.
11. What are the penalties of conviction?
12. How many Superior Judges in your county? What are their names?

<sup>1</sup> Cal. Const., Art. IV., Sect. 17, 18.

## PART III.

## THE FEDERAL GOVERNMENT.

## CHAPTER IX.

## THE FEDERAL CONSTITUTION.

48. **The Constitution of the United States** establishes the framework of the government, and sketches in outline the functions of the various parts of the governmental machinery. It seldom goes into detail, but confines itself to giving general directions, to laying down general principles. The details are, as a rule, to be supplied by statutes enacted by Congress, which is established by the Constitution as the legislative body of the Union. While in this way the foundations and great principles of government are firmly fixed by the Constitution, ample opportunity is left for the free growth of all necessary institutions.

49. **Formation of the Constitution.**—The Constitution was formed, in 1787, by a general convention which represented the people of all the States, and it was adopted by special representative conventions in all the States.<sup>1</sup>

50. **Amendments to the Constitution.**—There are two methods provided for proposing alterations or amendments to the Constitution. Congress itself, either by a vote of two thirds of the members of each house proposes amendments, or, on the application of two thirds of the Legislatures of the several States, calls a general convention for framing and proposing amend-

<sup>1</sup> U. S. Const., Art. VII.

ments. Amendments having been proposed in either one of these two ways, Congress submits them for adoption either to the Legislatures of the States or to special conventions in the States; and then, upon their being ratified by three fourths of the Legislatures or of the conventions, as the case may be, they become a part of the Constitution.<sup>1</sup>

There has been no general convention since the one which framed the Constitution in 1787, and all the fifteen amendments that have been made to the Constitution subsequently have been proposed by Congress and ratified by the State Legislatures. The only limitation now existing upon the power of amendment is that no State shall, without its consent, be deprived of its equal suffrage in the Senate.<sup>2</sup>

**51. The Supreme Law.**—The Constitution declares that “This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges, in every State, shall be bound thereby, anything in the Constitution and laws of any State to the contrary notwithstanding.”<sup>3</sup>

From this we see: (1) That the Constitution is the fundamental law, supreme as it stands, and unchangeable except by the proper course of amendment: “a law for rulers and people, equally in war and in peace, covering with the shield of its protection all classes of men, at all times and under all circumstances.”<sup>4</sup> (2) That a law of the United States, in order to be the supreme law, must be made in pursuance of the Constitution; that a treaty, in order to be the supreme law, must be made under authority conferred by the Constitution.

<sup>1</sup> U. S. Const., Art. V.

<sup>3</sup> U. S. Const., Art. VI., Par. 2.

<sup>2</sup> U. S. Const., Art. V., last clause. <sup>4</sup> Supreme Court of United States.

A law is not superior to a treaty, nor a treaty to a law; if they relate to the same subject, and are inconsistent with each other, the one that is later in time supersedes the earlier. (3) That a State law must yield to the supreme law, whether the supreme law is expressed in the federal Constitution or in constitutional laws and treaties of the United States.

**Questions on the Constitution of the United States.**

1. What is the Constitution of the United States?
2. When was it formed and when did it go into operation?
3. By whom was it formed and by whom adopted?
4. How may it be amended?
5. How many amendments have been added to it?
6. What is the wording of the provision of the Constitution referring to the "supreme power?"
7. What is the meaning of the provision?

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## CHAPTER X.

### THE FEDERAL LEGISLATURE.

52. **Congress.**—The law-making power is lodged, just as in the States, in a double Legislature called Congress, consisting of a House of Representatives and a Senate.<sup>1</sup>

There is an essential distinction between these two parts of Congress, and they represent different principles. The House of Representatives is a body of persons chosen from each State, the number depending upon the population of the State. The larger a State's population, the greater its number of Representatives in the House. This house represents, then, the people, but yet the people divided into States. In the Senate, on the other

<sup>1</sup>U. S. Const., Art. I., Sect. 1.

hand, each State has the same number of members, namely, two. The Senate, then, represents the principle of State equality, or, as it is called, the *federal* principle; while the House of Representatives represents the *national* principle.

**53. House of Representatives.**—The House of Representatives represents, as we said, the people of the United States by States. The number of Representatives is determined by Congress, and is re-apportioned every ten years on the basis of the latest census.<sup>1</sup> The Constitution directed that the number of Representatives should never exceed one for every thirty thousand inhabitants in a State.<sup>2</sup> After making provision for the number of members in the first Congress, it left to Congress to re-apportion in future the number every ten years. The number of members has steadily grown, from sixty-five in 1789 to three hundred and thirty in 1890, and the ratio of the apportionment has decreased from one for every thirty-three thousand to one for every one hundred and fifty-four thousand three hundred and twenty-five.

It is provided, however, by the Constitution, that every State, even though it do not have a population as large as the ratio of apportionment, shall have one Representative in Congress.<sup>3</sup> There are several States, which not having a population of one hundred and fifty-four thousand, have nevertheless one Representative in Congress.

**54. Qualifications of a Representative.**—A person to be elected a Representative must be at least twenty-five years of age, must have been a citizen of the United States for seven years, and must be at the time of his

<sup>1</sup> U. S. Const., Art. I., Sect. 2, Par. 3; and Amend. XIV., Sect. 2.

<sup>2</sup> U. S. Const., Art. I., Sect. 2, Par. 3.

<sup>3</sup> U. S. Const., Art. I., Sect. 2, Par. 3.

election an inhabitant of the State from one of whose districts he is chosen.<sup>1</sup>

**55. The Term of a Representative** is two years.<sup>2</sup> And this time, two years, is also the term of the whole House and of Congress. The Senate, as we shall see, has a continuous life, but it is considered that a new Congress begins with each new House. The First Congress went into operation March 4, 1789. On the fourth of March in every second year—that is, in every odd year—a new Congress begins its term. Therefore, the Congress of 1891–93 is known as the Fifty-second Congress. Of course, as a matter of fact, many Representatives who have served before are reelected to each new Congress.

**56. Who May Vote for Representatives.**—The Constitution provides that those persons in each State who are qualified under the laws of the State to vote for members of the larger of the two houses of the State Legislature—that is, in California, the Assembly—may vote for members of the House of Representatives of the United States.<sup>3</sup> It seems, therefore, that the States, each in its own way, prescribes the qualifications of those who may vote for Representatives to Congress. This arrangement leads to considerable diversity, and may result in persons who are not recognized as citizens of the United States voting for members of Congress.

**57. Organization of the House.**—The House has its own rules for regulating the number and the duties of its officers and for arranging its own way of doing business.<sup>4</sup>

**58. The Speaker.**—The chief officer is the Speaker. He is a member of the House and is elected by his fellow-

<sup>1</sup> U. S. Const., Art. I., Sect. 2, Par. 2.

<sup>2</sup> U. S. Const., Art. I., Sect. 2, Par. 1.

<sup>3</sup> U. S. Const., Art. I., Sect. 2, Par. 1.

<sup>4</sup> U. S. Const., Art. I., Sect. 5.

members. He is usually chosen by a party vote, and his election is the most exciting business of each new Congress. He is certainly one of the most powerful officers in the whole government, his power arising from the fact that he appoints the standing committees, who practically control the legislation of the House. The name of "Speaker" is taken from the practice in England, where the presiding officer of the House of Commons was so called, because, formerly, he was their spokesman, or speaker, in communications with the king. The name, as we have seen, is used for the presiding officer of the larger of the two houses in the State Legislatures, and it is also used in all the English colonies.

59. **The Standing Committees** are appointed by the Speaker immediately after his election. The House is so large, and has so much business to transact at each session, that its work is practically done by the more important of these committees. The House as a whole is not even able to debate and discuss the reports of its committees to the extent that is done in the Senate. The report of a committee is adopted almost as a matter of course, for naturally the majority of the committee reflect the party majority in the House. Every member of the House is a member of some committee or other. Most of the committees, however, have but little business to attend to, some, in fact, having no duties assigned to them by the rules.

The two most important committees are those on appropriations and on ways and means. The committee on appropriations has charge of the bills that allow the money necessary for meeting the yearly expenses of the government. This committee, under the rules of the House, has power to bring its reports at any time before the House for their consideration. It can thus stop the



consideration of any other question whenever it chooses, and thus practically control the House in its use of its time. Recent rules have taken some of the business out of the hands of this committee, by giving to committees on special departments—such as the war department or the navy department—the consideration of bills appropriating money to such departments. The committee on ways and means, which has charge of questions of taxation, is likewise an important and powerful committee. The chairmen of these two committees hold positions of great influence.

**60. Vacancies in the House.**—If a vacancy occurs in the representation of any State through death, resignation, removal, or other cause, the Governor of the State calls an election by the people.<sup>1</sup> The person then elected serves only for the remainder of the term for which his predecessor was elected.

**61. Senate.**—The Senate consists of two members from each of the States of the Union. Senators are chosen by the Legislature of the State they represent, and they hold office for six years.<sup>2</sup> They must be not less than thirty years of age, citizens of the United States for nine years, and inhabitants of the State which they are chosen to represent.<sup>3</sup>

**62. Division of the Senate.**—The Constitution directed that the first Senate should, upon assembling, divide its members, by lot, into three classes as nearly equal as possible. The members of one of these classes was then to retire at the end of two years; the members of the second class at the end of four years; and the members

<sup>1</sup> U. S. Const., Art. I., Sect. 2, Par. 4.

<sup>2</sup> U. S. Const., Art. I., Sect. 3, Par. 1.

<sup>3</sup> U. S. Const., Art. I., Sect. 3, Par. 3.

of the third class at the end of the full term, six years.<sup>1</sup> Thereafter, every Senator would hold office for six years, except that upon the admission of a new State, its first two Senators draw lots for a "long" and a "short" term. In this way one third of the Senate vacate their seats every two years.

The object of this arrangement is to give continuous life to the Senate and something like permanency to this branch of Congress. The members of the House of Representatives, on the other hand, by vacating their seats all together every two years, are intended to reflect the changing ideas of the people.

**63. Voting in the Senate.**—While the Senators represent the States, that is, the federal idea, still every Senator may cast his vote on any question in the Senate as he chooses.<sup>2</sup> It may thus happen, as it frequently does, that the two Senators from one State may vote on different sides of the same question. And the two Senators from one State, being elected at different times, may, and often do, belong to different political parties.

**64. Organization of the Senate.**—As in the case of the House, the Senate regulates its own methods of procedure,<sup>3</sup> and appoints all its own officers,<sup>4</sup> except its presiding officer.<sup>5</sup>

**65. The presiding officer of the Senate** is the Vice-President of the United States, whose only duty is, except in the case of the death of the President, to preside over the deliberations of the Senate. He is not a member of the Senate, he cannot participate in its dis-

<sup>1</sup> U. S. Const., Art. I., Sect. 3, Par. 2.

<sup>2</sup> U. S. Const., Art. I., Sect. 3, Par. 1.

<sup>3</sup> U. S. Const., Art. I., Sect. 5, Par. 2.

<sup>4</sup> U. S. Const., Art. I., Sect. 3, Par. 5.

<sup>5</sup> U. S. Const., Art. I., Sect. 3, Par. 4.

cussions, and he can vote only in cases where there is a tie.<sup>1</sup> The Senate chooses from its own number a President *pro tempore*, who presides in the absence of the Vice-President, or when the Vice-President has become President of the United States.<sup>2</sup>

66. **Standing Committees of the Senate.**—The work of the Senate is in large measure done through its standing committees. These committees are elected by the Senate for all the great classes of topics which come up for legislative action. Thus there are committees on appropriations, finance, foreign affairs, etc. Their method of working is similar to that of the standing committees of the House. The Senate committees do not monopolize all the power of their house as do the House committees the power of theirs. The reason for this is, that the Senate, being a much smaller body, can discuss and debate questions much more easily than the House. The continuous life of the Senate, too, helps in this, because the Senate does not have to consume a great amount of time at the beginning of each new Congress in effecting its organization. There is never, of course, any time lost in the election of its presiding officer.

Because of the fact that the Vice-President, the chairman of the Senate, is not a member of the Senate, the Senate elects its own committees by ballot.

67. **Vacancies.**—Vacancies from any State are filled by the Legislature of that State, if the Legislature is in session; if not, then by the Governor of the State until the next meeting of the Legislature.<sup>3</sup>

68. **Quorum.**—In order that either house of Congress may do any business, there must be present a majority

<sup>1</sup> U. S. Const., Art. I., Sect. 3, Par. 4.

<sup>2</sup> U. S. Const., Art. I., Sect. 3, Par. 5.

<sup>3</sup> U. S. Const., Art. I., Sect. 3, Par. 2.

of its members; 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 for itself.<sup>1</sup> Such a quorum is not in all countries, as it is in all the legislative bodies of our country, a majority of the members. For instance, in the English House of Commons, the number of whose members is six hundred and seventy, the quorum is only forty.

**69. Meetings of Congress.**—The Constitution requires Congress to meet at least once in every year.<sup>2</sup> There are thus two regular sessions during the term of each Congress. One of these sessions is popularly known as the “long” session and the other as the “short” session. Each new Congress ordinarily assembles on the first Monday of December in the odd-numbered years and continues till the following spring or summer. This is the long session. Then, in the even-numbered years, Congress again assembles on the first Monday in December and continues in session until March 4 following, when it must adjourn, its term having expired. This is the short session.

Inasmuch as members of the House of Representatives are elected in November of the even-numbered years, and inasmuch as the then existing Congress does not expire until the following March, a short session intervenes between the election of Representatives and their taking seats. The interval between the election of Representatives and their entering Congress is thus usually thirteen months.

Special sessions may be convened by the President.<sup>3</sup>

<sup>1</sup> U. S. Const., Art. I., Sect. 5, Par. 1.

<sup>2</sup> U. S. Const., Art. I., Sect. 4, Par. 2.

<sup>3</sup> U. S. Const., Art. II., Sect. 3.

**70. Power of either House over its Members.**—Each house is judge of the election, qualifications, and return of its members. It may punish a member for disorderly conduct, and it may, with the concurrence of two thirds, expel a member.

**71. Journal.**—Each house must keep and publish a journal of its proceedings. The yeas and nays must, on any question, when demanded by one fifth of the members present, be entered on the journal. Likewise, in the case of the reconsideration of a bill vetoed by the President, the names of the persons voting for and against the bill must be entered on the journal of the appropriate house.

**72. Adjournment.**—Neither house may adjourn during the session of Congress for more than three days, nor to any other place than that in which Congress may be sitting, without the consent of the other house.<sup>1</sup>

**73. Privileges and Disabilities of Members of Congress.**—Senators and Representatives receive from the United States a compensation determined by law. They are privileged from arrest while attending the sessions of Congress or in going to and from the same, in all cases except treason, felony, and breach of the peace. Their freedom of speech is guaranteed by the provision that a Senator or Representative shall not be questioned in any other place for any speech or debate in either house.

No person holding another office under the United States may be a member of either house while he continues in the former office; and no Senator or Representative shall, during his term, be appointed to any civil office under the United States which shall have been created or its emoluments increased during that time.<sup>2</sup>

<sup>1</sup> U. S. Const., Art. I., Sect. 5.

<sup>2</sup> U. S. Const., Art. I., Sect. 6.

74. **Process of Law Making.**—The process of making laws followed by Congress is similar to that followed by the Legislature of California, as described in Section 30, except in one particular. In Congress, it is only necessary that a bill, in order to become a law, shall receive the concurrence of a majority of a quorum in each house, while in the Legislature of California, it is necessary that it receive the concurrence of a majority of all the members elected to each house. The method followed by Congress renders it possible to pass a law by a minority of the members elected. The veto power of the President is similar to that of the Governor.<sup>1</sup> All bills, except those for raising money, may “originate” in either house and may be amended or rejected in the other.

75. **Money Bills.**—But all bills for raising revenue or appropriating money must, according to the Constitution, originate in the House of Representatives.<sup>2</sup> In making this exception in the case of money bills, the framers of our Constitution were following the practice in England, where it is required that such bills must originate in the House of Commons. The reason for this in England is that the House of Commons represents the people at large, while the House of Lords represents only a particular class, the nobility; therefore, any bill which is to lay a tax on the people or use their money ought to originate with their representatives.

This reason does not hold so strongly in the United States, where both the House of Representatives and the Senate either directly or indirectly represent the people. But the House of Representatives being directly elected by the people, being a more numerous body, and being, in consequence of its short term, more often called to account

<sup>1</sup> U. S. Const., Art. I., Sect. 7, Par. 2.

<sup>2</sup> U. S. Const., Art. I., Sect. 7, Par. 1.

at the polls, it was considered wise to adopt, in so far, the English custom.

An exception, however, was made in this custom, for while the House of Lords is not allowed to make any amendments to the House of Commons' money bills, permission is given to the Senate to propose what amendments it pleases to money bills that come to it from the House of Representatives.

#### Questions on Congress.

1. What is the wording of the provision in the Constitution establishing Congress?
2. Is Congress a legislative, executive, or judicial body? What is meant by these terms, respectively?
3. Of how many houses is Congress composed?
4. What is the general distinction between the Senate and the House of Representatives?
5. How many members has the House of Representatives?
6. How is this number determined?
7. How many Representatives has California in the House?
8. Give the names and residences of the Representatives from California now in the House.
9. Draw a map of California, dividing it into congressional districts. In what district do you live? Who is the Representative from your district? With what political party is he connected? Do all the voters of the State vote for the Representative from your district?
10. How many Representatives has the State of Nevada?
11. Who may be elected a Representative?
12. For how long is he elected?
13. When is he elected?
14. What is his salary?
15. Who may vote for Representatives?
16. What is the presiding officer of the House called? Tell what you can of the origin of his title, his duties, etc. What is the name of the present Speaker? Where does he live? To what political party is he attached?
17. How are the standing committees of the House appointed? Describe their duties.
18. How are vacancies in the House filled?
19. How many members has the Senate?
20. How is this number determined?

21. How many United States Senators has California? Give their names, residences, and political party.
22. Who may be elected Senator?
23. For how long is he elected?
24. When is he elected?
25. By whom is he elected?
26. What is his salary?
27. Who is the presiding officer of the Senate? What are his powers and duties?
28. How are the standing committees of the Senate appointed? Describe their duties.
29. How are vacancies in the Senate filled?
30. How many constitute a quorum in either house of Congress? What powers has a minority? How many constitute a quorum in the English House of Commons?
31. How often does Congress meet? When? What is meant by "long," "short," and "special" sessions?
32. Who decides the contest when two persons claim to be elected Senator or Representative?
33. Do the Senate and House keep a record of their proceedings? Is this record published? What is it called?
34. When must the yeas and nays be entered on the journal?
35. What are the provisions in the Constitution regarding adjournment?
36. What are the privileges of Senators and Representatives?
37. What are their disabilities?
38. What special provision is there in the Constitution regarding money bills?
39. Study carefully everything in the Constitution pertaining to the Senate and House of Representatives. Write out all such provisions connectedly in your note book.

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## CHAPTER XI.

### THE POWERS OF CONGRESS.

#### §1. *The Legislative Power of the United States.*

76. **Extent of the Legislative Powers.**—All the legislative powers possessed by the federal government are granted to it by the Constitution.<sup>1</sup> And all the

<sup>1</sup> U. S. Const., Amend. X.



legislative powers granted by the Constitution are exercised by Congress.<sup>1</sup> The Constitution gives a list of the legislative powers which it grants to Congress.<sup>2</sup> But while the Constitution thus enumerates the subjects in regard to which Congress may make laws, it also gives Congress permission to make all laws which shall be necessary and proper for carrying out its enumerated powers. And Congress, as the legislative department, being the part of the governmental machinery which sets all other parts in operation, has power to make all laws which shall be necessary for the carrying out of any of the powers granted to any other department of the government.<sup>3</sup>

All this means that the framers of the Constitution were aiming to build a government which should be supplied with machinery and powers sufficient for the purposes of a great nation. They intended, by the lee-way they gave to Congress, that no obstacle should be placed in the way of the successful progress of the national government. At the same time, by enumerating the powers, they intended to give to the national government no more powers than should be sufficient for its objects; and they intended, as the Constitution says, to leave all other powers with the States or with the people.<sup>4</sup>

We shall now proceed to consider the matters concerning which Congress is authorized to make laws.

## § 2. *General Description of the Powers of Congress.*

**77. Federal and State Legislation.**—We shall see that the list of powers given to Congress is a comparatively short one; that the powers seem to be

<sup>1</sup> U. S. Const., Art. I., Sect. 1.

<sup>2</sup> U. S. Const., Art. I., Sect. 8.

<sup>3</sup> U. S. Const., Art. I., Sect. 8. Par. 18.

<sup>4</sup> U. S. Const., Amend. X.

few in number. But, in considering these powers, we must remember, in the first place, that there are forty odd other legislative bodies in the United States—the State Legislatures, not to mention the several Territorial Legislatures—which are engaged in making laws for the people. It is to be remembered, in the second place, that it is not the laws of Congress so much as the laws of our own State Legislature which most closely touch us individually, and which provide for our protection in the daily transactions of life. And, in the third place, while these powers of Congress may seem few in number, they are so broad and general in character, and relate to questions of so far-reaching importance, that they are really sufficient for the purposes of the national government.

Most of these powers are indispensable for a complete and efficient government; but some few are given to Congress simply because it is more convenient to have them exercised by that body than by the separate States.

**78. Classification of the Powers of Congress.—**Now, there are several aspects under which Congress, as the law-making body of the nation, may be regarded with reference to the powers conferred upon it. In the first place, in order to establish and maintain an *independent* government, it was necessary to provide means for the support of the government itself; therefore, it was given the power to levy taxes. It was equally necessary to give it the power to determine who should be members of the nation; therefore, it was given power to pass naturalization laws. It was also necessary, in this same view, to give it the power to coin and borrow money, and to punish the counterfeiting of money. Likewise, and for the same reason, it was necessary to give it the power to establish federal courts.

Then, in the next place, in its *international* aspect, as

the government which was to place the American Union in the great family of nations, and as the only power that could be recognized by foreign governments, it was necessary that it should be given control over war and the military and naval forces.

Then, thirdly, as the *general* government of the nation, it was necessary that it should have control of matters of general concern, such as commerce and the postal service. And so, too, it was essential that the federal government should be given temporary control over such territory as was the common property of the Union, and over all territory that might be acquired by treaty, cession, or conquest. And while this territory or public domain should, in accordance with the republican principles of self-government, and so soon as the size of population justified it, be divided up and placed in all respects on an equality with the States of the Union, it was yet essential that the terms and conditions of the admission of such new States should be determined by Congress.

These would complete the questions that would essentially belong to the federal or national government. But there are two matters, that of bankruptcy and that of weights and measures, which, for the general business interests of the country, it was thought ought to be placed under the control of Congress. And, also, for the encouragement of inventive genius and literary aspiration, and that authors and inventors might be uniformly protected throughout the United States in their writings and inventions, Congress was given control over copyrights and patents. Furthermore, that there might be a seat of government which would be beyond the reach of any possible State jealousy or interference, provision was made for the acquisition of necessary territory for this purpose, and Congress was given complete control over it.

We shall now briefly discuss these various topics which are placed under the control of Congress.

§ 3. *The Powers Enumerated: (1) Powers Essential to an Independent Self-Existence.*

79. **Taxes.**—The power to tax is the very source of life of a government, for if it did not have the means of getting an income there would be no possibility of its continued existence. Every necessary means of obtaining such an income by means of taxation is given to the federal government. This income must be raised for the purpose of paying the debts of the United States, and providing for the common defense and general welfare.<sup>1</sup>

This power is exercised through Congress. Congress may raise its revenue by taxes on goods brought into the country from foreign countries (*imposts* or *customs duties*); by taxes on individual inhabitants (*capitation* or *poll taxes*), and by taxes on land; by taxes on the production or use of goods within the country (*excises*, or, generally speaking, *internal taxes*).<sup>2</sup> In levying capitation and land taxes, which are known as *direct taxes*—all other forms of taxes being *indirect taxes*—it is required that they shall be apportioned among the States in proportion to their population.<sup>3</sup> And in regard to duties, imposts, and excises, it is required that they shall be uniform throughout the United States.<sup>4</sup> One species of tax Congress is forbidden to resort to, it being expressly said that no tax shall be laid on articles exported from any State (*export duties*).<sup>5</sup>

80. **Citizenship and Naturalization.**—The Constitution provides that all persons born or naturalized in the

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 1.

<sup>2</sup> U. S. Const., Art. I., Sect. 8, Par. 1.

<sup>3</sup> U. S. Const., Art. I., Sect. 9, Par. 4.

<sup>4</sup> U. S. Const., Art. I., Sect. 8, Par. 1.

<sup>5</sup> U. S. Const., Art. I., Sect. 9, Par. 5.

United States and subject to its jurisdiction shall be citizens of the United States and of the State in which they reside.<sup>1</sup> Full and formal citizenship can only be given by the federal Constitution or by a federal law in accordance with the Constitution. By means of "naturalization," the exclusive control of which is given to Congress, the Constitution enables "aliens," or foreigners residing in the United States, to become citizens. A foreigner who thus becomes, under the laws of Congress, a citizen of the United States is a "naturalized citizen," and acquires all the rights and privileges of a native born citizen except the ability to become President.<sup>2</sup>

81. **Money.**—Congress is given the power to borrow money on the credit of the United States;<sup>3</sup> to coin money and regulate its value and the value of foreign coin;<sup>4</sup> and to provide for the punishment of counterfeiting the securities and current coin of the United States.<sup>5</sup>

82. **The power to borrow money** is to some extent supplementary to the power to levy taxes. They are both for the purpose of obtaining an income, one in the regular and usual course of things, the other in consequence of some crisis in which the usual methods fail. The customary way to obtain loans is to issue "bonds" of the government. These bonds are promises to pay the sum specified on their face at a given time and with interest at given rates. These bonds are then sold to the persons who will pay the highest prices for them. If the "credit" of the government is good, they will be bought at par, or even at a premium. If the credit is not good, they will be bought at a greater or less discount.

<sup>1</sup> U. S. Const., Amend. XIV., Sect. 1.

<sup>2</sup> U. S. Const., Art. II., Sect. 1, Par. 5.

<sup>3</sup> U. S. Const., Art. I., Sect. 8, Par. 2.

<sup>4</sup> U. S. Const., Art. I., Sect. 8, Par. 5.

<sup>5</sup> U. S. Const., Art. I., Sect. 8, Par. 6.

83. **The power to coin money** in the United States is given exclusively to Congress, the States being forbidden to coin money or to make anything but gold and silver a "tender" in payment of debts.<sup>1</sup> It is necessary that every independent government should have this power of coining money, and it is for the best interests of the country that the currency should be uniform.

By "coining" is meant stamping pieces of metal for use as a medium of exchange in commerce and trade according to fixed standards of value. It is not an easy matter, however, to fix the standard, when more than one metal is used. If gold alone were used, the standard would always be the same, and the dollar would depend on the market value of the gold contained in the dollar-piece. But there is not a sufficient amount of gold in the world to supply the purposes of currency. Governments have, therefore, to use silver also, and perhaps even baser metals. Congress, under its power to "regulate the value of money," has tried to overcome the difficulty of having two metals in use as currency, by finding out as nearly as they could the market value of both gold and silver, and issuing coins in both metals of such weight that they should have the same value. It has not been possible to do this fully, for at one time or another there is a greater quantity of one or of the other metal. In that event, the more valuable coins rise in value, and are collected by speculators and melted down, while the cheaper coins are left in circulation. In order to prevent this, the method pursued is to make the silver coins lighter than their real value, so that they are worth less than gold; and then they are made "legal tender" in small sums only. Then, of course, there can be no object in hoarding or in melting down these lighter silver coins, for a dollar-piece, while it will buy a dollar's worth of goods, is still

<sup>1</sup> U. S. Const., Art. I., Sect. 10, Par. 1.

not worth a dollar in silver bullion. And gold is kept in circulation by being made indispensable in larger transactions.

84. **Mints.**—The government has public mints in Philadelphia, San Francisco, Carson, and Denver, where the coins are made and stamped. In the case of gold, the owner of the “bullion” takes it to the mint, has it coined, and then coin in full value of the bullion is returned to him. This is called “free coinage.” Until 1853 there was free coinage of both gold and silver; but since 1853, of gold only. In the case of silver, whose metallic, or commercial, value is so much below its nominal, or coin, value, the government purchases it in open market in such quantities as it wants, and coins it exclusively for itself.

85. **The power to punish counterfeiting** of coin of the United States and of foreign coin, Congress has exercised by making such counterfeiting a felony. The penalty for the offense is fixed at a fine of not more than \$5,000 and imprisonment for not more than ten years.

86. **The Federal Courts**, which Congress is empowered to establish,<sup>1</sup> are necessary to the independence of the national government. The government having a law-making body and a law-executing body of its own, must, in order to preserve its own peace and dignity, have law-applying and law-interpreting bodies of its own. These courts are described later in Chapter XIII., under the head of the Federal Judiciary.

These powers which we have been considering are necessary to a government, in order that it may be capable of existing and developing in a manner free and independent of any other government. These

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 1; and Art. III., Sect. 1.

powers give it the capacity of self-existence, considered by itself or with respect to the States. But it was also necessary to remember that there are many other nations and governments in the world. In the course of time the American government might come into conflict with some one of these other governments. It was then necessary to give it the means of defending itself, of maintaining its dignity and existence against foreign assault, as also against domestic insurrection. And, too, it was proper and necessary that the government should have the means of entering into arrangements in regard to trade and commerce, or the postal service, or many other subjects, with foreign powers.

To repeat again, by giving the government the taxing power, the money power, and control over its own membership, the means of self-existence are imparted to it. By giving it the power to make laws and to establish courts for applying and enforcing these laws, the means of compelling peaceful obedience from its citizens are also imparted to it. By giving it the power to make "treaties,"<sup>1</sup> the means of securing peaceable alliances with foreign governments, and thus of entering into the "family of nations" in times of peace, are granted to it; while for maintaining its dignity and respect, the additional powers of declaring war and of supporting military and naval forces are necessary.

(2) *Powers Essential to an Independent International Existence.*

87. **The War Power.**—The power to declare war, which is given to Congress, means the power to declare whether or not there shall be war in a given case.<sup>2</sup> But

<sup>1</sup>The power to make treaties is not given to Congress, but to the President with the assent of the Senate.

<sup>2</sup>U. S. Const., Art. I., Sect. 8, Par. 11.



war may exist without any "declaration of war." In such case Congress by some act recognizes war as already existing and provides means for its prosecution. Thus, in the case of the war of 1812, Congress passed an Act expressly declaring war, while in the case of the war with Mexico, the preamble of an Act making provision for carrying on the war merely said "whereas, a state of war exists," etc. In the case of the war of the rebellion, war was not even expressly recognized, but the Act of July 22, 1861, is entitled "An Act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property."

88. **Letters of Marque and Reprisal.**—In connection with the war power is given also power to grant letters of marque and reprisal,<sup>1</sup> and to make rules concerning captures on land and water. The word *marque* means landmark or boundary, and *letters of marque* mean commissions to a private person authorizing him to pass beyond the frontier and make captures of an enemy's property or persons. The word *reprisal* means a retaking, and indicates the purpose for which the "letters" are granted. A vessel bearing such letters is called a *privateer*.

89. **The power to raise and support armies, and to provide and maintain a navy, is a necessary adjunct of the war power.** And it is important that a nation should possess this power in peace as well as in war, for the mere existence of an army and navy may often prevent the occurrence of a war. The whole control and regulation of the military forces of the country is thus placed, as it should be, under the power of the federal government.<sup>2</sup>

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 11.

<sup>2</sup> U. S. Const., Art. I., Sect. 8, Par. 12, 13, 14.

90. **The militia** which the States are allowed to have is placed at the disposal of Congress whenever it may be needed in order to execute the laws of the Union, suppress insurrections, or repel invasions.<sup>1</sup> All the male citizens of a State between the ages of eighteen and forty-five, unless "exempted" by law, are subject to service in the State militia. The organized militia of a State constitutes its "National Guard." This body is trained by officers appointed by the State according to military regulations approved by Congress.<sup>2</sup> This militia serves as a great security to the country, and it is not found necessary to maintain a large standing army like those in Europe.

From the experience of England and other European countries, where armies were often used by the head of the state or by some military commander to oppress the people, the Constitution took the precaution of providing that "no appropriation of money for raising and supporting armies should be for a longer term than two years."<sup>3</sup> In time of need Congress may enlist in its armies all persons, whether previously exempted or not, whether minors or adults, capable of military duty.

91. **Power to Punish Crimes.**—As a further incident of the membership of the American nation in the family of nations, Congress is given power over certain offenses against the law of nations. It is authorized to define and punish piracies and felonies committed on the high seas, and other such offenses.<sup>4</sup> Piracy is robbery at sea. By its power to *define* piracy, Congress is authorized to extend the meaning as commonly understood by the "law of nations," or "international law," so as to include

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 15.

<sup>2</sup> U. S. Const., Art. I., Sect. 8, Par. 16.

<sup>3</sup> U. S. Const., Art. I., Sect. 8, Par. 12.

<sup>4</sup> U. S. Const., Art. I., Sect. 8, Par. 10.

all such infamous acts committed on the high seas as constitute offenses against the United States or other nations. For instance, Congress under this power has declared the slave trade to be piracy. By the high seas is meant all tide-waters below low-water mark.

(3) *Powers Essential to a General Federal Government.*

92. **Commerce.**—The subjects which we have just been discussing are indispensable to the very existence of a national government, while those which we are now to consider are almost equally necessary for the proper working of a government like ours. Perhaps the chief cause of the failure of the Articles of Confederation (1781–1789) was the absence of any general power over commerce. Instead of the commerce of one nation, it was found that there was a commerce of thirteen different States, each State filled with jealousy of its neighbors and striving to make as much as possible at the expense of the others. Therefore, when it came to the time of forming a new Constitution, there was but one opinion as to the necessity of giving Congress control over all commerce with foreign nations, over commerce between two or more States, and that with the Indian tribes.<sup>1</sup>

This power over commerce includes the power to regulate navigation and intercourse on the high seas, on the great lakes and navigable rivers of the country, transportation and intercourse by railroads or canals between different States. It may include such things as providing for the construction of bridges over navigable rivers between States, and for the dredging and improving of harbors or navigable rivers, or as regulating communication by telegraph between States. These powers “keep pace with the progress of the country, and adapt themselves to the new developments of times and circum-

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 3.

stances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances."<sup>1</sup>

In order to make this power of Congress more complete, the *States are expressly forbidden*, unless by consent of Congress, to levy any duty on imports or exports, or to lay any duty of tonnage.<sup>2</sup> Tonnage means a duty on vessels, measured by their carrying capacity. At the same time, *Congress is forbidden* to give any preference to one State over others in its commercial regulations, or to tax articles exported from any State.<sup>3</sup> Furthermore, the commerce or trade which is carried on wholly *within one State* is entirely under the control of the State itself, and cannot be regulated by any action of Congress.

In the exercise of its power over commerce between States, Congress in 1887 passed the *Interstate Commerce Act*. This law provides for the appointment of five commissioners, whose duty it is to supervise such railway and other transportation companies as have lines crossing two or more States.

**93. The Postal Service.**—It is essential to the convenience of the people of the whole country that the means of communication and correspondence with all parts of the Union should be under one general system. This power is therefore given to Congress, and includes the creation of mail routes, the opening of post roads, the regulation of the transmission of mail matter by horse,

<sup>1</sup> The Supreme Court of the United States.

<sup>2</sup> U. S. Const., Art. I., Sect. 10, Par. 2.

<sup>3</sup> U. S. Const., Art. I., Sect. 9, Par. 5, 6.

stage, steamship, or railroad, the payment of salaries of postmasters and clerks, and all that goes to make up the vast postal system of the country.<sup>1</sup> Correspondence by telegraph and telephone might legally come under the control of Congress.

**94. Territories.**—Congress is given full power to make laws concerning the territory belonging to the nation and not yet formed into States.<sup>2</sup> The original territory, ceded by the States to the Union, lying between the Alleghany Mountains and the Mississippi River, and all the territory since acquired by treaty or purchase, comes under this exclusive control of Congress. Congress has, nevertheless, organized this territory into districts of convenient size, known, for lack of a better name, as "Territories." To each of these Territories it ordinarily gives, practically, rights of self-government. The government usually established consists of a Legislature elected by the people of the Territory, and of a Governor and judges appointed by the President, with the assent of the Senate. In this way, the people themselves make most of their own laws. Congress, however, has complete control whenever it chooses to exercise it.

The people of the Territories do not have the national political rights possessed by the people of the States. They cannot vote for the President or for members of Congress. They are ordinarily allowed to send a delegate to Washington, who has a seat in the House of Representatives, but no vote. But as soon as the Territory has become a State, it and its people have equal rights and privileges with the other States and their people.

**95. The Admission of New States.**—The power of admitting new States into the Union is given to Con-

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 7.

<sup>2</sup> U. S. Const., Art. IV., Sect. 3, Par. 2.

gress. It is provided, however, that no new State shall be formed within the jurisdiction of another State. And likewise, no State shall 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 Congress.<sup>1</sup>

No entirely uniform plan of admitting States has been observed. The most common plan is as follows: When a Territory has a sufficient population, a memorial is sent to Congress, praying for permission to form a State Constitution and for admission into the Union. Congress, if it agrees to this petition, passes an Act called "An Enabling Act," authorizing the inhabitants to form a Constitution. A convention is held for this purpose, and the Constitution when formed and adopted is presented to Congress for approval. If Congress perceives no objectionable features in the Constitution, it passes an Act admitting the State into the Union.

The Constitution promises that the United States will guarantee to every State a republican form of government, and will protect every State against invasion and domestic violence.<sup>2</sup>

#### (4) *Miscellaneous Powers.*

There are several other subjects over which Congress is given greater or less control for the sake of having the laws uniform throughout the Union. These are the subjects of *bankruptcy*, *weights and measures*, *copyrights* and *patents*, and a few others.

96. **Bankruptcy.**—By its power over bankruptcy,<sup>3</sup> Congress may, if it chooses, pass uniform laws by which "insolvent debtors" may settle their affairs and be able to

<sup>1</sup> U. S. Const., Art. IV., Sect. 3, Par. 1.

<sup>2</sup> U. S. Const., Art. IV., Sect. 4.

<sup>3</sup> U. S. Const., Art. I., Sect. 8, Par. 4.

begin business anew. "A bankrupt law is intended for the benefit of both creditors and debtors. It benefits the creditors by securing among them an equitable distribution of the property of the debtor. It benefits the debtor by releasing him from hopeless insolvency, and giving him an opportunity again to engage in business."

If there is no general law of Congress in force, the States are free to legislate on the subject. Congress has, at different times, passed three uniform bankrupt laws: the first in 1800, repealed in 1803; the second in 1841, repealed in 1843; the third in 1867, repealed in 1878.

**97. Weights and Measures.**—Congress has never fully carried out its power to fix the standard of weights and measures.<sup>1</sup> It has adopted the brass troy pound weight, procured from London, as the standard troy pound of the mint of the United States. It also ordered to be made a standard series of weights corresponding to this, from the hundredth part of a grain to twenty-five pounds. It also adopted the English standard lengths of the foot, yard, fathom, and rod. Our coins are established on the decimal system; and in 1866 Congress "legalized," but did not "adopt," the metric system of weights and measures.

**98. Copyrights and Patents.**—The Constitution gives Congress power "to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."<sup>2</sup> Under this power, exclusive copyrights are granted for a term of years to the authors, inventors, designers, or proprietors of books, pictures, maps, charts, prints, statues, models, etc., with exclusive right to make, use, and sell new inventions.

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 5.

<sup>2</sup> U. S. Const., Art. I., Sect. 8, Par. 8.

99. **Federal Districts.**—Congress is given power to exercise exclusive legislation over a district to be used as the seat of government of the United States. This district was to be obtained by cession from individual States, and was not to exceed ten miles square.<sup>1</sup> The District of Columbia, ceded by Maryland and Virginia, was selected as the seat of government, and thus came under the control of Congress. In 1878 the government of the district was placed under a board of three commissioners, two to be appointed by the President and Senate for three years, and the third, an officer of the corps of engineers of the army, to be detailed by the President. These commissioners have the general management of the interests of the district, appointing police, firemen, school trustees, and other officers. Inhabitants of the district have no vote.

Congress has, likewise, exclusive control over places purchased by consent of the Legislatures of the States wherein they lie, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.<sup>2</sup>

100. **Impeachments.**—The House of Representatives has the sole power of impeaching,<sup>3</sup> and the Senate the sole power of trying the person impeached.<sup>4</sup> The President, Vice-President, and all civil officers of the United States are liable to impeachment for treason, bribery, or other high crimes and misdemeanors.<sup>5</sup> The method of trial and the penalties are similar to those in a State trial under articles of impeachment. (See Chap. VIII.)

101. **Treason.**—Congress is given “power to declare the punishment of treason, but no attainder of treason

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 17.

<sup>2</sup> U. S. Const., Art. I., Sect. 8, Par. 17.

<sup>3</sup> U. S. Const., Art. I., Sect. 2, Par. 5.

<sup>4</sup> U. S. Const., Art. I., Sect. 3, Par. 6.

<sup>5</sup> U. S. Const., Art. II., Sect. 4.



shall work corruption of blood or forfeiture except during the life of the person attainted.”<sup>1</sup> The punishment for treason, as declared by Congress, may be death by hanging, or may be imprisonment for not less than five years and a fine of not less than \$10,000. The cruel feature of punishing a traitor’s descendants by corruption of their blood, that is, making them incapable of inheriting property, and by confiscation of their property, is prohibited by the Constitution. Treason is defined in the Constitution to consist only in levying war against the United States, and in adhering to its enemies, giving them aid and comfort.<sup>2</sup>

#### Questions on the Powers of Congress.

1. Whence does the United States obtain its legislative powers?
2. Where are the legislative powers of the United States vested?
3. Are the legislative powers of the United States granted in general terms or specifically enumerated?
4. Turn to the Constitution of the United States and to the Constitution of California and notice the difference in wording in which the legislative power in the two is described.
5. Write out the list of powers granted in the Constitution to Congress.
6. Give a general description of the powers of Congress.
7. Collect and write down all the provisions in the Constitution relating to taxes.
8. What do you mean by taxes?
9. Are taxes necessary?
10. Mention some of the different kinds of taxes.
11. From whom does the government collect imposts, or customs duties? Who finally pays this tax? Show how this is. Describe the difference between a direct and an indirect tax.
12. What provisions in the Constitution regarding citizenship and naturalization?
13. What do you mean by naturalization?
14. Do naturalized citizens have all the rights and privileges of native born citizens?

<sup>1</sup> U. S. Const., Art. III., Sect. 3, Par. 2.

<sup>2</sup> U. S. Const., Art. III., Sect. 3, Par. 1.

15. What are the provisions in the Constitution regarding money?
16. What powers has Congress with regard to the establishment of courts?
17. What powers has Congress with respect to declaring war? With respect to letters of marque and reprisal? To armies? To the militia?
18. In regard to what crimes may Congress legislate?
19. Discuss the provisions in the Constitution concerning commerce?
20. What powers has Congress with respect to the postal service?
21. What powers has Congress with respect to the Territories and the admission of new States?
22. Explain the powers which Congress may exercise with respect to:
  - (a) Bankruptcy;
  - (b) Weights and measures; (explain the distinction between "legalizing" and "adopting" the metric system);
  - (c) Copyrights and patents;
  - (d) Federal districts;
  - (e) Impeachments;
  - (f) Treason.

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## CHAPTER XII.

### THE FEDERAL EXECUTIVE.

#### § 1. *The President.*

102. **The Executive Power.**—According to the Constitution, "the executive power is vested in the President of the United States."<sup>1</sup> This means that the President is the chief among the executive officers of the government. In the enormous mass of business to be attended to, it is found necessary to have many other officers. A series of departments has been established, and heads placed over these departments. The President, together with these departments, constitutes the federal executive. The

<sup>1</sup>U. S. Const., Art. II., Sect. 1, Par. 1.

President, however, is the responsible head of the executive power; he is the only executive officer who is elected by the people; the heads of the departments are appointees of his, are his advisers, are responsible to him, and are not coördinate officers with him. He is by his office the most conspicuous person in the nation; he represents the national unity in our dealings with foreign countries.

**103. Qualifications for President.**—In order that a person may be eligible to the Presidency, he must be a native born citizen, at least thirty-five years of age, and a resident within the United States for fourteen years.<sup>1</sup> The salary of the President is fixed by law, and may not be increased nor diminished during the period for which he has been elected.<sup>2</sup>

**104. Election of President and Vice-President.**—The President and Vice-President are not elected directly by the people, but indirectly, through “electors” chosen by the people. The people in each State elect as many electors as the State has Senators and Representatives in Congress.<sup>3</sup> These electors are chosen at an election held on the Tuesday following the first Monday of November in the year preceding the expiration of the presidential term.<sup>4</sup> As it happens, the first election having taken place in 1788, this election for presidential electors occurs in November of every leap year. After their election, the electors meet in the capitals of their several States, on the first Wednesday in December, and cast their votes for President and Vice-President. These votes are then sent to Washington, and, on the second Wednesday in the following February, are opened and counted in Con-

<sup>1</sup>U. S. Const., Art. II., Sect. 1, Par. 5.

<sup>2</sup>U. S. Const., Art. II., Sect. 1, Par. 7.

<sup>3</sup>U. S. Const., Art. II., Sect. 1, Par. 2.

<sup>4</sup>U. S. Const., Art. II., Sect. 1, Par. 4.

gress, the Senate and House of Representatives meeting together for this purpose.<sup>1</sup> The person then declared elected President is "inaugurated," or sworn into office, with appropriate ceremonies, on the fourth day of the following March.

**105. Working of the Electoral System.**—The method prescribed for electing the President and Vice-President is one of the few features of the Constitution in which its framers departed from the practice of the Colonies or of England. And it is one of the few that have not worked in the way in which they were designed. The intention was that each elector should use his own judgment and vote for the person, any one he chose, whom he might think best qualified for the office. As a matter of fact, however, the elector is now practically pledged to vote for some particular persons, known as the party candidates, for President and Vice-President. During the summer before the election, national conventions of the leading political parties are held, attended by delegates from all the States in the Union, and persons are there nominated for President and Vice-President. Then later, conventions of these parties are held in the individual States and electors are nominated. These electors, when chosen by the people, vote, as a matter of course, for the nominees of the national convention of their party. Thus, when the election comes off in November, while the people are nominally voting for electors, they have in mind the persons nominated for President and Vice-President, and are really voting for these latter. As soon as it is known what sets of electors are elected, it is known what persons are elected President and Vice-President. The casting of the votes, then, by the electors, becomes merely a form.

<sup>1</sup>U. S. Const., Amend. XII.

106. **Election of President by the House of Representatives.**—The Constitution provides that if no person receives a majority of the electoral votes for President, the House of Representatives shall elect one from among the three receiving the greatest number of electoral votes. The House of Representatives, when voting for President under these circumstances, votes “by States;” that is to say, each State has one vote, and a majority of the votes of the Representatives from each State makes the one vote of the State. A quorum for this purpose consists of a member or members from two thirds of the States, and a majority of all the States is necessary to a choice.<sup>1</sup>

107. **Election of Vice-President by the Senate.**—In case no person receives a majority of the electoral votes for Vice-President, the Senate is to elect one from the two receiving the greatest number of electoral votes. A quorum of the Senate for this purpose consists of two thirds of the whole number of Senators, and a majority of the whole number is necessary for a choice.<sup>2</sup>

108. **The Presidential Succession.**—In case of the removal, death, resignation, or inability of the President, the Vice-President succeeds to the office of President, and fills it for the remainder of the term for which the person whose place he takes was elected, or, in case of disability, until the disability is removed.<sup>3</sup> Congress has provided that in case of the removal, death, resignation, or inability of both the President and Vice-President, the office of the President is to be filled until the disability of the President or Vice-President is removed, or until a President shall be elected, by the Secretary of

<sup>1</sup>U. S. Const., Amend. XII., Par. 1.

<sup>2</sup>U. S. Const., Amend. XII., Par. 2.

<sup>3</sup>U. S. Const., Art. II., Sect. 1, Par. 6.

State; or, if he cannot act, by the Secretary of the Treasury; or, if he cannot act, by the Secretary of War; and so on, in succession, by the Attorney-General, the Postmaster-General, the Secretary of the Navy, or the Secretary of the Interior.<sup>1</sup>

In order that any one may exercise the office of President, he must have the qualifications prescribed by the Constitution for the President.

**109. Duties and Powers of the President.**—The duties of the President are summed up in the words of the Constitution: "He shall take care that the laws are faithfully executed."<sup>2</sup> These duties are, of course, performed for the most part not by himself directly, but by executive officers appointed to assist him.

As to his powers, he is made commander-in-chief of the army and navy of the United States, and of the State militias when they are called into the actual service of the United States.<sup>3</sup> He regulates the foreign relations of the country by receiving all foreign ministers,<sup>4</sup> and by being authorized to make treaties with the assent of the Senate.<sup>5</sup> He may grant pardons for offenses against the United States except in cases of impeachment.<sup>6</sup>

With the assent of the Senate, he appoints and commissions all officers of the federal government whose appointment is not otherwise provided for.<sup>7</sup> Such officers include ambassadors, ministers, and consuls, who represent the United States abroad, judges of the Supreme Court, and a vast number of other officials, such as heads of the departments, postmasters, territorial Governors and

<sup>1</sup> U. S. Const., Art. II., Sect. 1, Par. 6.

<sup>2</sup> U. S. Const., Art. II., Sect. 3.

<sup>3</sup> U. S. Const., Art. II., Sect. 2, Par. 1.

<sup>4</sup> U. S. Const., Art. II., Sect. 3.

<sup>5</sup> U. S. Const., Art. II., Sect. 2, Par. 2.

<sup>6</sup> U. S. Const., Art. II., Sect. 2, Par. 1.

<sup>7</sup> U. S. Const., Art. II., Sect. 2, Par. 2.

judges, revenue officers, and so forth. When vacancies occur during the recess of the Senate, the President may fill them by granting commissions which expire at the end of the next session.<sup>1</sup>

110. **Civil Service Appointments.**—The Constitution allows Congress to do away with the assenting or confirming power of the Senate in the filling of all inferior offices, and then to place their filling, as it sees fit, in either the President, the courts, or the heads of departments.<sup>2</sup> The appointment of a large number of inferior officers, such as postmasters and revenue collectors, is given exclusively to the President. These officials are mainly clerks in the civil service of the government. Efficiency and merit are the prime qualifications needed from such officials, and such qualifications would be deemed indispensable for clerks in the management of any private business. The principles that hold good in the conduct of private business ought to hold good in the conduct of government business. Politics ought to have no place in the appointment of such government officials as we are considering.

In consequence of the abuse of their power in the matter of such appointments by some of our Presidents, and after many years of discussion and of platform promises, Congress, in 1883, passed an Act, designed to "take the civil service out of politics," entitled "An Act to regulate and improve the civil service of the United States," and commonly known as the "Pendleton Act." This law provides for the appointment by the President, with the assent of the Senate, of a Civil Service Commission. This commission consists of three persons, not more than two of whom are to belong to the same political party. They are to have the over-

<sup>1</sup> U. S. Const., Art. II., Sect. 2, Par. 3.

<sup>2</sup> U. S. Const., Art. II., Sect. 2, Par. 2.



sight of the appointments to the department service in Washington, and in custom houses, and in post offices having fifty clerks. Competitive examinations are held at stated times, and vacancies are filled from those who stand highest in the examinations. This law affects many thousand clerks in the customs and postal service of the country, and the security in their positions is no longer disturbed by a change in the Presidency. A beginning in the right direction has thus been made.

**111. Relations between the President and Congress.**—We have already seen the part which the President takes in the making of laws through his “veto” power. He is further directed by the Constitution to give to Congress information on the state of the Union, and to recommend to their consideration such measures as he shall think necessary or expedient.<sup>1</sup> This information he gives by means of written messages. He is authorized to convene on extraordinary occasions one or both houses of Congress.<sup>2</sup> And if the two houses of Congress should be unable at any time to agree upon the time of their adjournment, he is authorized to adjourn them to such time as he deems proper.<sup>3</sup>

The only direct relation with Congress that the President has in making laws is in his vetoes, which Congress may override by a two-thirds vote, and in his messages, which Congress may entirely disregard. This arrangement agrees with the idea that was in the minds of the framers of the Constitution, that the different departments or branches of government—the legislative, executive, and judicial—should be entirely separate. No other great nation, however, carries this separation so far, and there are some practical inconveniences in it.

<sup>1</sup> U. S. Const., Art. II., Sect. 3.

<sup>2</sup> U. S. Const., Art. II., Sect. 3.

<sup>3</sup> U. S. Const., Art. II., Sect. 3.



Many suggestions have been made for bringing about a closer relation between the executive and legislative departments, as, for instance, making the cabinet officers members of Congress, just as in England the cabinet officers are members of Parliament.

### § 2. *The Executive Departments.*

112. **The Cabinet.**—Congress has established, for the discharge of the executive business of the government, eight departments, whose heads have seats in the President's cabinet, or advisory board. The First Congress established four such departments: the Departments of State, of the Treasury, of War, and of Justice. In 1798 the management of the navy was taken from the War Department and given to a special Department of the Navy. In 1829 the post office, which had been under the Treasury Department, was made an independent department. In 1849 the Department of the Interior was established; and in 1889 a Department of Agriculture was formed. The heads of these departments are appointed by the President with the consent of the Senate. They hold office at the will of the President, and are responsible to him for the proper performance of the duties of their offices.

113. **The Department of State** is presided over by the Secretary of State, whose most important duty is to manage the relations of the United States with foreign countries. This officer conducts the correspondence with foreign ministers and with our ministers and consuls abroad. He issues passports to American citizens visiting foreign countries. He issues warrants for the extradition of criminals in accordance with treaties with foreign governments. He has charge of treaties and negotiates new ones. He keeps the archives of the

government; publishes the laws, treaties, presidential messages, proclamations. He is the keeper of the Great Seal of the United States.

114. **The Treasury Department**, presided over by the Secretary of the Treasury, has charge of the financial business of the government. It is the duty of this Secretary to prepare and suggest plans for creating revenue and supporting the credit of the United States; to superintend the collection of revenues coming from the customs duties and internal taxes; to grant warrants for the payment of money according to appropriations by Congress; to audit the accounts of all the departments; to supervise and regulate the national banks and the currency of the United States, the coinage of money, and to attend to the collection of a variety of statistics. These are the main duties of this department, although there are many other duties.

115. **The Department of War**, presided over by the Secretary of War, has charge of the military forces of the Union, the signal service, the spending of money appropriated by Congress for the improvement of harbors and of navigation.

116. **The Department of the Navy**, presided over by the Secretary of the Navy, has charge of the naval forces, and of certain matters relating to navigation, such as the issuing of nautical charts and almanacs.

117. **The Department of Justice** is presided over by the Attorney-General of the United States. The Attorney-General has charge of all law suits in which the United States is concerned as a party. He is consulted for legal advice by the President, heads of departments, and other federal authorities. To this department all the marshals and district attorneys of the United States are attached.

118. **The Post Office Department**, presided over by the Postmaster-General, has charge of the carrying and delivery of letters and parcels known as mail matter, and the sending of money by means of money orders. It classifies mail matter, and fixes the rates of postage. It has power to make postal arrangements with foreign countries.

119. **The Department of the Interior**, presided over by the Secretary of the Interior, was organized in 1849 to take charge of various duties which had grown up with the development of the country. The diverse duties under the charge of this department are: (1) The management of the public land, including mines (*General Land Office*); (2) the regulation of dealings with the Indians (*Indian Bureau*); (3) the payment of pensions and the distribution of bounty lands (*Pension Office*); (4) the issuing of patents to inventors, and preserving models of all machines patented (*Patent Office*); (5) care and distribution of all public documents (*Superintendent of Public Documents*); (6) the collection of statistics and facts showing the condition and progress of education, and the publication of such information as may assist in the improvement of education throughout the United States (*Bureau of Education*); (7) taking the census of the United States every ten years (*Census Office*); (8) the auditing of the accounts of certain railroad companies to which the United States has granted loans and subsidies (*Commissioner of Railroads*); (9) the superintendence of the government hospital for the insane and the Columbia asylum for the deaf and dumb (under the *Pension Office*).

120. **The Department of Agriculture**, presided over by the Secretary of Agriculture, has for its duty the promotion of the agricultural interests of the country. It collects information and makes scientific investigations

as to the diseases of plants, the best methods of cultivating the soil, and so forth.

Besides these departments, whose heads have seats in the cabinet, there are several other offices or boards, namely:

121. **The Department of Labor**, the duty of which is to collect and publish information concerning such matters as rates of wages, hours of labor, food and expenses of laborers, and all matters which may lead to the improvement of the condition of laborers.

122. **The Interstate Commerce Commission**, which has supervision of the rates which railroads may charge for carrying passengers and freight from one State to another. Its duty is to see that certain laws of Congress, which are intended to make railroads treat all persons equally and fairly in the matter of such rates, are carried out.

123. **The Civil Service Commission**, whose duties we have already examined.

124. **The Commission of Fish and Fisheries**, whose duty it is to provide for the preservation, improvement, and increase of the stock of fish in the rivers and lakes and on the coasts of the United States.

#### **Questions on the Federal Executive.**

1. Who is the chief executive of the United States?
2. Who may be elected President?
3. What is his salary?
4. How is he elected?
5. When is he elected?
6. For how long is he elected?
7. Who may vote at the presidential election?
8. How does the electoral system work?
9. In what event is the President elected by the House of Representatives?

10. In what event is the Vice-President elected by the Senate?
11. In case of the removal, etc., of the President, who becomes President?
12. What further provision is made for the presidential succession?
13. What are the names, residences, and political party of the persons now holding the offices of President and Vice-President?
14. What are the powers and duties of the President?
15. What arrangements are made for appointments in the civil service?
16. What relations exist between the President and Congress?
17. Describe the powers and duties and mode of appointment of each of the following officers; give the names and residences of the persons now in office:
  - (a) The Secretary of State;
  - (b) The Secretary of the Treasury;
  - (c) The Secretary of War;
  - (d) The Secretary of the Navy;
  - (e) The Attorney-General;
  - (f) The Postmaster-General;
  - (g) The Secretary of the Interior;
  - (h) The Secretary of Agriculture.
18. Describe the functions of the following:
  - (a) The Department of Labor;
  - (b) The Interstate Commerce Commission;
  - (c) The Civil Service Commission;
  - (d) The Commission of Fish and Fisheries.

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## CHAPTER XIII.

### THE FEDERAL JUDICIARY.

125. The Judiciary of the United States consists of the Supreme Court, Circuit Courts, and District Courts. To these may be added the Circuit Courts of Appeals and the Court of Claims.<sup>1</sup>

<sup>1</sup> U. S. Const., Art. III., Sect. 1.

126. **The Supreme Court** consists of a Chief Justice and eight Associate Justices. It meets annually in Washington, on the second Monday in October. Six Justices make a quorum. The court has original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and in all cases in which a State is a party.<sup>1</sup> All other cases that come before it are appealed to it from State courts or from federal Circuit or District Courts.<sup>2</sup> Generally speaking, cases may be appealed to the Supreme Court only when the matter in dispute exceeds \$5,000 in value. But any case in which a law of Congress has been declared unconstitutional by a lower court, that is, any case which involves an interpretation of the Constitution, may be appealed to the Supreme Court regardless of the sum in dispute.

127. **Circuit and District Courts.**—The area of the United States—exclusive of the Territories—is divided into nine circuits. One Justice of the Supreme Court is assigned to each of these circuits, and in addition there are special Circuit Judges. The Circuit Court in session may consist of the Supreme Court Justice alone, of the Circuit Judge alone, or of either of these and the resident District Court Judge. The circuits are divided into districts, the boundaries never crossing State lines. Some of the States constitute each a single district; some are divided into two districts, and some into three, according to the population and the amount of business. For each district there is a District Court. The District Courts are considered the lowest of the federal courts. The Circuit Court of each circuit sits in each district of its circuit successively, and the Supreme Court Justice is required by law to sit in each district of his circuit at least once every two years. These courts have been

<sup>1</sup> U. S. Const., Art. III., Sect. 2, Par. 1 and 2.

<sup>2</sup> U. S. Const., Art. III., Sect. 2, Par. 1 and 2.

established by Congress under its power to constitute tribunals inferior to the Supreme Court.<sup>1</sup>

128. **Circuit and District Courts have jurisdiction** only in cases which Congress, under the Constitution, has referred to them. The District Courts have power, subject to appeal to the Circuit Courts of Appeals, to try certain civil cases where the matter in dispute exceeds \$50 in value, and in admiralty and maritime cases. The Circuit Courts have power to try, in the first instance, certain civil cases where the matter in dispute exceeds \$500 in value. In criminal cases, punishable under federal law, capital offenses may be tried by the Circuit Courts only; all lesser offenses, by either the Circuit or District Courts.

129. **Jurisdiction.**—The nature of the questions that may come before federal courts rather than before State courts is fixed by the Constitution.<sup>2</sup> These questions may be divided into two classes: “(1) Those in which it is manifestly proper that its authority, rather than the authority of a State, should control, *because of the nature of the questions involved*; for instance, admiralty and maritime cases, navigable waters being within the exclusive jurisdiction of the federal authorities, and cases arising out of the Constitution, laws, or treaties of the United States, or out of conflicting grants made by different States. (2) Those in which, *because of the nature of the parties to the suit*, the State courts could not properly be allowed jurisdiction; cases affecting, for instance, foreign ambassadors, who are accredited to the government of the United States, and with whom our only relations are national relations, whose privileges rest upon the sovereignty of the States they represent; or cases in

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 9; Art. III., Sect. 1.

<sup>2</sup> U. S. Const., Art. III., Sect. 2, Par. 1.

which the State courts could not have complete jurisdiction because of the residence of the parties; for instance, suits arising between citizens of different States.”\*

**130. Circuit Courts of Appeals.**—The Circuit Courts of Appeals have been established for the purpose of hearing cases on appeal from the District Courts and for relieving the Supreme Court. A Circuit Court of Appeals is established in each circuit. It consists of three judges: the Circuit Judge of the circuit in which the court is held, an additional Circuit Judge, and the Supreme Court Justice of the circuit. In case any one of these is absent, a District Judge in the circuit may sit in the court. The court meets annually, and hears on appeal such cases as Congress may direct to be brought before it.

**131. Court of Claims.**—The Court of Claims consists of five judges, and sits at Washington. Any person having a claim against the government lays the matter before this Court. The court reports its proceedings to Congress, which may then pass a bill to satisfy the claim.

**132. All Federal Justices and Judges** are appointed by the President, with the assent of the Senate,<sup>1</sup> and hold office during good behavior.<sup>2</sup> They may be removed upon impeachment and conviction.<sup>3</sup> Any judge, after ten years' consecutive service, being seventy years of age, may retire on full pay if he desires. The compensation of the judges cannot be diminished during their term of office.<sup>2</sup>

**133. District Attorneys and Marshals.**—For each district there is appointed a district attorney and a marshal. The district attorney is the law officer of the United

\* Wilson, *The State*, p. 556.

<sup>1</sup> U. S. Const., Art. II., Sect. 2, Par. 2.

<sup>2</sup> U. S. Const., Art. III., Sect. 1.

<sup>3</sup> U. S. Const., Art. II., Sect. 4.



States for the district. He has charge of all suits for the federal government. The marshal's duties are similar to those of a sheriff. He executes all the orders of the federal courts of his district, he arrests and keeps all prisoners charged with violating the federal laws, and so forth.

**Questions on the Federal Judiciary.**

1. Of what does the judiciary of the United States consist?
2. Tell what you can about the Supreme Court under the following heads:
  - (a) The names and residences of the present Chief Justice and Associate Justices;
  - (b) Time of session;
  - (c) Quorum;
  - (d) Original jurisdiction;
  - (e) Appellate jurisdiction.
3. What are the inferior federal courts called?
4. What is the nature of the jurisdiction of the federal courts?
5. What powers has Congress:
  - (a) Over the Supreme Court;
  - (b) Over Circuit and District Courts?
6. What power has the President over federal judges?
7. What are the duties of district attorneys and marshals?
8. What is meant by appellate jurisdiction?
9. What is meant by original jurisdiction?
10. What is meant by power to try cases "in the first instance?"

## PART IV.

## GENERAL CONSIDERATIONS.

## CHAPTER XIV.

## CITIZENSHIP, SUFFRAGE, AND ELECTIONS.

§ 1. *Citizenship.*

134. **How Citizenship is Acquired.**—The fourteenth amendment of the Constitution of the United States declares that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>1</sup> There are, then, two ways in which one may become a citizen: (1) By birth in the United States, and (2) by naturalization. But in addition to one’s being born in the United States, he must be subject to its jurisdiction. An illustration or two will indicate what is meant by this. Indians born in the United States, but still preserving their tribal relations, living on reservations, are not subject to the jurisdiction of the United States and are not citizens. Children born in the United States of foreign ministers or consuls temporarily residing in this country are not subject to the jurisdiction of the United States and are not citizens. Likewise, persons who have given up their citizenship in the United States by becoming citizens of foreign countries are no longer subject to the jurisdiction of the United States.

135. **Naturalization.**—Foreigners residing in the United States may be naturalized by proceedings before

<sup>1</sup>U. S. Const., Amend. XIV.

a court of law in accordance with a general law of Congress.<sup>1</sup>

The method of procedure which a foreigner desiring to become a citizen must pursue is as follows:

After a residence in this country of not less than three years he must appear before a court of law in the State or Territory in which he desires to exercise the rights of citizenship, and declare his intention to become a citizen of the United States. Not less than two years later he must apply for citizenship, and upon showing that he has properly made a declaration of his intention, and renouncing allegiance to the government of which he was before a citizen, and taking the oath to be a loyal citizen of this country, such declarations being supported by two reliable witnesses, he may be admitted as a citizen of the United States.

The children born abroad of American citizens are themselves American citizens; children of foreigners residing in the United States may choose for themselves of which country they shall be citizens.

The residents of a foreign territory become naturalized citizens of the United States, when such territory, together with its inhabitants, is acquired by the United States. Thus, the inhabitants of the territory of Louisiana, of Florida, of Texas, and of portions of Mexico, became citizens of the United States when the country in which they lived became incorporated in the United States.

**136. Loss of Citizenship.**—Naturalization in one country implies a loss of citizenship in another. This loss of citizenship is called *expatriation*. A law of Congress declares that “*expatriation* is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness.”

<sup>1</sup> U. S. Const., Art. I., Sect. 8, Par. 4.

137. **Citizenship in State and Nation.**—As a rule, every citizen in the Union is clothed with a double citizenship, citizenship of the United States and citizenship of the State in which he resides. We cannot conceive of a citizenship of a State unconnected with citizenship of the United States, nor, where a person resides in a State, of his federal citizenship unconnected with his State citizenship. When a person resides in a Territory, however, his citizenship of the United States is unconnected with that of a State.

Naturalization can only be conferred by the United States, and not by a State.

### § 2. *Suffrage.*

138. **Meaning of Suffrage.**—Suffrage is the right to vote; that is, to participate in the government by taking part in the choice of public officers. It is a privilege that is conferred by the people themselves, through the Constitution, on such classes of persons as they think wisest to intrust with this sacred and responsible duty. It is the highest privilege of citizenship. But citizenship may exist without the right of suffrage. And this privilege, too, may be conferred on those who are not citizens. In fact, a number of the States do admit aliens to vote, when they have merely declared their intention of becoming citizens. We cannot regard such action on the part of a State as other than a degradation of this high privilege and as a menace to our American institutions.\*

The power to confer the right of suffrage lies with the States, and not with the federal government.

\*The different words, "right," "privilege," and "duty," are used here advisedly. Suffrage is a "privilege," inasmuch as it may be conferred or withheld by the Constitution of the State (subject to the limitations of the fifteenth amendment of the U. S. Constitution); when it has been conferred, it becomes a "right," which can be enforced by the individual invested with it; and it is also a moral "duty" for the person invested with this right to exercise it.

**139. Qualifications of Electors.**—The qualifications of voters or electors are usually prescribed by the Constitution of the State. These qualifications vary in the different States. The California Constitution contains the following provision: "Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Querétaro, and every male naturalized citizen thereof, who shall become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law."<sup>1</sup>

**140. Persons Excluded from Voting.**—As a rule, suffrage is conferred, as above, on men only, women not being admitted to the privilege. In California it is expressly declared that "no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privilege of an elector in this State."<sup>2</sup>

**141. Conditions Which Shall not be Imposed.**—The California Constitution prohibits the requiring of a property qualification for the right of voting.<sup>3</sup>

The fifteenth amendment of the Constitution of the United States provides that "the rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."<sup>4</sup> This provision gave to the freedmen and other colored persons

<sup>1</sup> Cal. Const., Art. II., Sect. 1.

<sup>3</sup> Cal. Const., Art. I., Sect. 24.

<sup>2</sup> Cal. Const., Art. II., Sect. 1.

<sup>4</sup> U. S. Const., Amend. XV.

an equal right with the whites to be considered in the bestowal of the rights of suffrage.

This provision applies only to persons who are declared by the Constitution to be "citizens;" it does not prohibit Congress from refusing naturalization, and thus citizenship, to foreigners on account of race or color or for any other reason. And, as a matter of fact, the naturalization laws of the United States as they now stand extend the right of aliens to become citizens to whites and to persons of African descent alone.

### § 3. *Elections.*

142. **Political Parties.**—It seems indispensable to the presence of an active political spirit in a free and self-governing nation that there should exist political parties. In our country there have always been two or more great national parties. These parties represent different views as to methods of governing or as to questions of public policy. They are organized, primarily, for the purpose of electing the President and Vice-President and the members of Congress. Inasmuch as these national elections are held within the States and within the local divisions of the States, this organization of the national parties is carried into the smallest of these local divisions. For many reasons, therefore, the tendency is for national parties to make the nominees for State, county, and city officers. There may, of course, be local parties, representing local questions or demanding local reforms, but the influence of the national parties is nearly always present, unless it be in the local elections of smaller towns.

143. **Caucus, Primary, and Convention.**—The object of the political parties is to name persons who are to be voted for for the various public offices at elections provided by law. The persons thus named are known

as the *nominees* or *candidates* of the party naming them. These candidates are usually nominated by a *convention* of party delegates. The delegates to such a convention may be appointed by a standing *executive committee* of the party, or by a party *caucus*, or at a *primary election*.

Ordinarily the executive committee, which was appointed at the preceding convention, has no authority to appoint delegates to a nominating convention. But when an election is approaching, the committee issues a call to the members of its political party to meet at a specified time and place in order to choose delegates for a convention. Such a meeting would be known as a caucus. Sometimes the caucus itself, instead of appointing delegates to a convention, nominates the party candidates directly. Sometimes the executive committee appoints a time when the qualified voters of the party may themselves vote for delegates to a convention. Then different factions of the party may each hold a caucus and nominate sets of delegates. Upon the day appointed the qualified electors of the party vote for the delegates of their choice. Such an election is called a primary.

Each party goes through some such process in selecting its candidates.

144. **Campaign.**—After the nominations have been made by the several parties, there begins what is known as the political *campaign*. This continues until the day of the election, and is an organized movement whereby the leaders of the several parties put forth every effort to advance the interests of their own candidates and to discredit the candidates of the other party or parties. The “issues” upon which each party claims the favors of the people for its candidates are industriously agitated.

145. **Evils of Party Methods.**—The existence of political parties seems to be a sign and a condition

on the part of the people of a healthy interest in the government. Organization is evidently necessary for the practical and efficient working of parties. But there are evils attending the caucus and convention and campaign which call for the most earnest thought from every intelligent citizen. Such evils are the influence and corruption practiced by political "bosses," the buying of votes, and "treating" to liquor. They are especially prevalent in larger cities.

146. **The Election.**—The preliminary proceedings which have been described are devised and arranged by the political parties, and are not a part of the machinery provided by law. The law provides for the registration of voters, for the times, places, and manner of holding elections, and for the means of canvassing the returns, or the mode of determining the result. It is by general and uniform laws of the State that these questions are regulated.

147. **Registration.**—In California it is required that before any person, otherwise qualified to vote, may cast his ballot on election day, he shall have appeared before the proper officer—a county clerk or his deputy, or a registrar of voters—and be *registered*. This means that he shall have enrolled his name, and stated such facts as his age, place of birth, occupation, time of residence in the precinct, county, and State, his naturalization if a foreign born citizen, and so forth. Whoever neglects to register himself, although otherwise qualified, is not allowed to vote on election day.

148. **Balloting or Voting.**—When the day appointed by law has come around for the election, the voters proceed to the balloting places, or *polls*, assigned for their election precinct. These polls are under the charge of officers



duly appointed according to law. The voter deposits his *ticket*, or *ballot*, in the ballot-box. The object of the ballot system is to secure secrecy in the matter of voting, preventing any one from knowing for whom the voter casts his ballot, unless he himself chooses to tell.

149. **The California Ballot Law.**—It is the object of the law to have elections pure and fair. But many corrupt practices have crept in; intimidation, bribery, and fraud are too common. The ordinary ballot system has not been found to insure perfect secrecy and independence in voting. As an attempt to correct some of these abuses, California, as also some other States, has adopted a system which has been in use in the Australian colonies. The ballots, according to this system, are printed and distributed at public expense, and each ballot contains the names of all the candidates of all the parties. Opposite the name of each candidate is the name of his party—as “Republican,” “Democratic,” “Prohibition”—and then a vacant square. All the ballots are in charge of the election officers, and are not given out except one at a time to actual voters. Upon receiving a ballot, the voter goes into an inclosed space in the balloting room, marks crosses in the squares opposite the names he wishes to vote for, and then folds his ballot and returns it to the election inspector, who drops it into the ballot-box. If the voter wishes to vote for every candidate on any one of the party tickets, that is, does not wish to “scratch” his ticket, he simply marks a cross in a vacant square opposite the name of the party ticket for which he wishes to vote, and omits it after the names of the candidates. He is under the supervision of the election officers all the time, and none but these officers and actual voters in the process of preparing their ballots are allowed within the balloting room.

150. **The Canvass.**—After the polls are closed, the ballots are counted, or *canvassed*, by the election officers. If the number of ballots in the box agrees with the number of persons marked on the register as having voted, it is presumed that no mistake has been made, and that the election has been fair. If, however, there are more ballots than names canceled, in some States the election is declared void and must be held over again; in other States a number of ballots equivalent to the excess is taken out and destroyed. If the election is a local one, or in a school district or town, the election officers count the votes, and may then and there announce the result, or they may be required to make a return to the town trustees, for instance, who canvass the returns and declare the result. If it is a county election, the inspectors of each precinct send a written return to the county canvassers, who, from the returns of all the precincts of the county, determine and declare the election of the officers of the county. If it is a State election, the several county boards of canvassers send their returns to the State board, who determine and announce the result.

151. **Number of Votes Necessary for Election.**—The general rule governing elections in the United States is that the person receiving a *plurality* of the votes cast is elected. This means that the person who has received a greater number than any other person shall be considered elected. Where there are but two candidates, a plurality is necessarily a majority. Where there are more than two candidates, a plurality may be a majority of all votes cast, or it may be a minority.

152. **Contested Elections.**—Where the results of an election are disputed, means of settling the dispute are provided by law. In the case of an election to a legislative office, the final decision as to who is elected rests with

the legislative body itself.\* In other cases, a candidate who has not been returned by the canvassing board, but thinks he has received a plurality of votes, brings suit in a court of law for a recount of votes. The court examines into the case, and decides according to the evidence.

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## CHAPTER XV.

### TAXATION.

**153. Reasons for Imposing Taxes.**—A government in order to exist and carry out the purposes of its establishment must have an income. This income is obtained by taxes. A tax is a portion of a man's property or savings taken under form of law for the support of the government. In return, the government affords protection to the man's person and property.

**154. Purposes of Taxation.**—The purposes for which taxes may be levied must be public in their nature, and not for the private benefit of individuals. It may not always be possible to tell whether a tax is used for a public purpose, but the people should always be on the alert to see that it is so employed.

**155. Extent of the Power of Taxation.**—The power of taxation by the government is unlimited. Granted the right to tax any given object, the tax may be made so great as to cause the destruction of the object. Thus, at the beginning of the Civil War, the currency issued by State banks was purposely taxed so high by

\* In England the determination as to who is elected to a legislative office, formerly resting with the legislative body, is now given to the courts. Such questions being judicial in their nature, ought, it would seem, to come before a court of law, and not be decided by a large legislative body, where political, and not legal, reasons too often prevail.

Congress that it went out of existence. This power of taxation resides in both the federal government and the State governments. The power to tax being unlimited in extent, it follows that a State government may not tax the federal government or its agencies, nor may the federal government tax a State government or its agencies; otherwise, one or the other might be totally destroyed.

156. **Kinds of Taxes.**—Taxes are divided into various kinds, according to the objects on which they are laid. Thus, *duties*, or *customs duties*, are taxes laid on goods imported into a country from abroad. *Excises* are taxes on the manufacture or consumption of goods within a country. *Direct taxes* are taxes on the individual person (*poll taxes*) or taxes on land. All taxes that are not direct are called *indirect taxes*.

157. **State Taxation.**—The State depends for its revenue almost wholly on taxes levied on land and on personal property. Some States, as California, also impose a poll tax on every male inhabitant between the ages of twenty-one and sixty years. In a system of State taxation the needs of the State government have to be provided for, as also the needs of all minor local divisions of the State, as counties, cities, towns, school districts. These taxes are regulated by general laws of the State, but the collection is left to the local divisions.

158. **Assessment and Collection.**—The income required for carrying on the State government is determined by the State Legislature at its regular sessions; that is, in California, every two years. This sum is apportioned among the several counties in proportion to the value of the property contained within them. Similarly, the supervisors of each county in California decide each year the amount necessary for meeting county

expenses; and the town and city authorities estimate the amount necessary for carrying on their local governments.

The State does not collect its taxes itself. It leaves it to the counties to assess the value of the property belonging to the property owners in the county, and to collect the taxes, and afterwards turn the money over to the State Treasurer. Each county has its assessor, who estimates the value of each man's property, and its tax collector, who collects the taxes thus assessed. Thus, in a county a property owner pays at the county seat two taxes, which, for convenience, are added together and included in the same tax bill—a State tax and a county tax. Then, each town and city has its assessor and tax collector, who assesses the property and collects the tax from the property owners in the city or town for municipal purposes. The owner of property in an incorporated city or town thus pays three taxes: a State, a county, and a municipal tax.

159. **Boards of Equalization.**—Taxes ought to be equal. That is to say, every person ought to contribute to the expenses of government according to the value of the property he owns. And the value of every man's property ought to be estimated on the same basis. Therefore, the boards of supervisors of the several counties act as boards of equalization for their respective counties, and the boards of councilmen or trustees in cities and towns perform similar functions for their local divisions. And since there are so many different assessors in a State, there must be much variation in the general standard of valuation. An attempt is made in some States to regulate these inequalities by means of State boards of equalization. Thus, in California, there is a State board, consisting of one member elected from each of four districts into which the State is divided for this purpose,

together with the Controller. The members of this board hold office for four years. They visit as a board, or by the individual members thereof, each county in the State whenever deemed necessary, and there hear and decide complaints that may be brought before them by property owners as to unjust or unequal assessment of their property. They hold regular monthly meetings at the State capital, and from the first Monday in August to the first Monday in September are required to sit in daily session. Their duty at this meeting is to equalize the valuation of the taxable property of the several counties of the State.

160. **Federal Taxation.**—This subject has been sufficiently discussed in Part III.

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## CHAPTER XVI.

### THE THREE DEPARTMENTS OF GOVERNMENT.

161. **Division of the Functions of Government.**—The powers or functions of government may be divided into three great classes: (1) The making of laws, or the legislative class; (2) the faithful carrying out of the laws, or the executive class; (3) the application of laws in the settlement of disputes, or the judicial class. When all these classes of powers are concentrated in the hands of one person or body of persons, an arbitrary and tyrannical exercise of them is much easier than when they are distributed among different bodies of persons. It is, therefore, a maxim in political science to intrust each of these classes of powers to a separate and independent department of government. Each department acts as a check upon the other departments, and the liberties of the people are thus much better guarded.

162. **The Legislative Department.**—Accordingly, both the Federal and State Constitutions recognize this principle, and provide for the separation of government into three departments—the legislative, the executive, and the judicial. Each of these departments acts under and in accordance with the Constitution by which it is created. The function of the legislative branch is to discuss questions of public policy, and to make such regulations and laws as will tend to promote the public welfare. In other words, it is the law-making body. The law-making body of the Union is Congress, and the law-making body of each of the States is its State Legislature. Congress is established by the Constitution of the United States, and passes laws in accordance with the powers granted to it by that document. The State Legislatures are established by the Constitutions of their respective States, and they may pass laws on all subjects, (1) where they are not forbidden by the Federal Constitution; (2) where they are not forbidden by the State Constitution; and (3) where such action would not be inconsistent with the powers granted by the Federal Constitution to Congress.

163. **Division of the Legislature.**—In order to insure care and reflection in the making of laws, it is customary to divide the legislative department into two branches, or houses. It is usual to give these two houses something of a different basis and character. And so, usually, one of the two houses is more numerous than the other. The larger house, too, is elected for a shorter term than the smaller. Both Congress and the State Legislatures are thus divided. In Congress, there is the Senate, composed of two members from each State, elected by the State Legislatures and holding office for six years; and there is the House of Representatives, composed of

a number of members from each State, varying according to the population of the States, elected by the people of the State and holding office for two years. In the State Legislature of California, there is a Senate, composed of forty members, elected by the people, one Senator from each of the forty senatorial districts into which the State is divided, and holding office for four years; and the Assembly, composed of eighty members, elected by the people, one Assemblyman from each of the eighty assembly districts into which the State is divided, and holding office for two years.

Now, every measure proposed in either of these two houses, the Senate and the House of Representatives in Congress, or the Senate and Assembly in the State Legislature, after having passed the house in which it is first proposed, must pass the other house also. The purpose of this arrangement is to secure as thorough deliberation as possible on every measure that is considered by the legislative body before it shall become a law of the State or nation.

164. **The Executive Department.**—The legislative body does not execute the laws which it has made; it directs what is to be done, and the manner in which it is to be done, and then leaves the actual carrying out of its acts to the executive department. The discussing and framing of measures for the public welfare requiring deliberation and interchange of opinion, the legislative body is composed of a large number of members. The enforcing of the laws requiring promptness and energy, this executive duty is intrusted to a single officer, who is assisted, of course, by a vast number of subordinate officials. The national executive is the President; the State executive, the Governor; and the city executive, the Mayor.



165. **The Judicial Department.**—The majority of the laws made by the Legislature are for the purpose of defining and regulating the rights of individuals as between themselves, and the defining and punishing of offenses against the public peace and order. Authorities must, consequently, be provided, whose duty it shall be to decide questions of dispute that may arise between individuals as to what are their respective rights under the law, and to decide whether a person charged with a public offense has in fact committed the offense or has broken the law. These things involve an inquiry into the meaning of the law and the applying of the law to particular cases. These duties, of deciding controversies, administering justice, interpreting and applying the law, belong to the judicial department of the government. This judicial department consists of the courts of the State or of the nation, presided over by their respective judges.

166. **Unconstitutional Legislation.**—The Constitution of the State and the Constitution of the United States are the supreme law. Congress may pass laws only upon subjects over which it is given power by the Federal Constitution. The Legislature of the State is restrained by both the Federal and State Constitutions from making laws in certain cases. Therefore, in the discharge of the duties above mentioned, the courts may have to decide the question whether an act or law of Congress is within the powers given to Congress by the Federal Constitution, or whether an act or law of a State Legislature is inconsistent either with the State Constitution or the Federal Constitution, or with the grant of powers to Congress. If the court finds that an act of Congress was not authorized by the powers given to Congress in the Constitution, or that an act of the Legislature is inconsistent with the

provisions of either the Federal or the State Constitution, it must decide that the act was *no law*, or, as it is usually termed, was *unconstitutional*.

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## CHAPTER XVII.

### THE NATURE OF LOCAL GOVERNMENT.

167. **Local Self-Government.**—It is one of the distinguishing marks of the American form of government, following in this the English example, that the preservation of health and order, the protection of life and property, the actual administration of the law of the State in nearly all that concerns the safety, peace, comfort, and happiness of the citizens, is left to local authorities elected by the people of the local community. In the people of the State as a whole resides the ultimate power and authority, limited only by the Constitution of the United States and by that greater power which resides in the people of the whole Union as a nation. But the people of all the States, in framing their Constitutions and establishing their governments, have everywhere, in accordance with the instinct and traditions of the English-American race, made provision for a system of local self-government. The people of each county, or township, or city, elect their own officials for the application of the law and the administration of the affairs of the community. The State officers have, in general, no supervision of these local officers, and the latter are not responsible to the former, but solely to the people of the district by whom they have been elected.

168. **Local Divisions of the State.**—The names of the local divisions of the State differ somewhat in different States of the Union, and the distribution of functions

among such divisions varies. All of the States, however, are divided into civil divisions, called counties, except Louisiana, where the parish takes the place of the county. The county may be considered the primary division in California. The counties, again, are subdivided into townships and school districts. Within the county, too, may be established, formerly by special charter granted by the Legislature, now under a general law, incorporated cities and towns. The county always exists with its corps of officers. The township and school district sometimes become absorbed in the town or city; sometimes, however, they continue in existence as separate divisions, with their own officers, even when a town may have grown up within them. And, of course, the township may include several towns within its borders. Sometimes, as in the case of San Francisco, the limits of the county and city coincide, and there is a consolidated government of city and county officials.

169. **Duties of Local Government.**—Having obtained this general view of the local divisions in a State, we will now see what are in general the duties of local government. These functions of local government are the administration of justice in all cases except those that come before the Supreme Court, the establishment of police and sanitary regulations, the licensing of trades, the support and management of schools, the assessment and collection of taxes, the construction and maintenance of roads, bridges, and public buildings, such as court-houses, city halls, school-houses, hospitals, jails; the care of the poor; in short, they embrace everything coming under the control of government that tends to the protection and improvement of the citizens of the community. The distribution of these functions among county, township, town, or city governments is purely

a matter of convenience, and is regulated by general laws of the State Legislature.

170. **Methods of Local Government.**—The operation of local government is in accordance with the directions of the general laws of the State. Consequently, there is less call for a strict division of local officials into the three departments of legislative, executive, and judicial. The legislation needed for the county has already in large part been accomplished by the general laws of the State. The judicial officers administer these general laws, and are thus really a part of the judicial department of the State. The principle of local self-government, however, is carried out in their case by having the judges elected by the people of the local districts, and by having them administer justice between the residents of the local district. Most of the duties of local government are executive or administrative in their character, requiring the application of general laws to local circumstances. But there is also some field for local legislation. And the legislative bodies of the local divisions of the State, called boards of supervisors, councilmen or town trustees, boards of education or school trustees, have authority to pass any laws that may be necessary in the discharge of their duties, under the names of ordinances, by-laws, rules and regulations, which are not inconsistent with the general laws of the State.

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## CHAPTER XVIII.

### THE NATURE OF STATE GOVERNMENT.

171. **Position of the States in the Federal Union.** The Federal Constitution recognized the existence of the thirteen original States. It was by the people of

these States that the Constitution of the United States was adopted. This Constitution provided, further, for the formation and admission of new States into the Union. As we know, the number of these States has been so increased that there are now forty-four States as constituent members of this Union. This Constitution, again, by its tenth amendment, declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." What the powers are that are "delegated to the United States" we saw in Part III. We may say here, however, that they are only such powers as are necessary for the existence, preservation, and well-being of the nation as such. And the powers which are "prohibited to the States" are only such as would, if exercised by a State government, tend to interfere with the successful working of the national government. All other powers are "reserved to the States or to the people."

172. **Powers Prohibited to the States.**—The powers which the Constitution of the United States forbids the States to exercise are the following: No State shall enter into any treaty, alliance, or compact; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. No State shall, without the consent of Congress, lay any duties on imports or exports, or any duty of tonnage; keep troops or ships of war in time of peace; enter into any agreement with another State or with a foreign power; engage in war unless actually invaded or in such imminent danger as to admit of no delay.

173. **Powers Reserved to the States.**—“Compared with the vast prerogatives of the State Legislatures, these limitations seem small enough. All the civil and religious rights of our citizens depend upon State legislation; the education of the people is in the care of the States; with them rests the regulation of the suffrage; they prescribe the rules of marriage, the legal relations of husband and wife, of parent and child; they determine the powers of masters over servants, and the whole law of principal and agent, which is so vital a matter in all business transactions; they regulate partnership, debt and credit, and insurance; they constitute all corporations, both private and municipal, except such as specially fulfill the financial or other specific functions of the federal government; they control the possession, distribution, and use of property, the exercise of trades, and all contract relations; and they formulate and administer all criminal law, except only that which concerns crimes committed against the United States, on the high seas, or against the laws of nations. Space would fail in which to enumerate the particulars of this vast range of power; to detail its parts would be to catalogue all social and business relationships, to examine all the foundations of law and order.”\* The sovereign character maintained by a State is shown in the fact that a State, by its Constitution, refuses to permit itself to be sued by a private individual in the federal courts or except by special concession in the State courts.

174. **State Constitutions.**—Now, the exercise of the powers of the State is provided for in the State Constitution. The Constitution of a State is formed by delegates of the people of the State meeting in a convention. After the Constitution is thus framed, it is submitted to

\* Wilson, *The State*, p. 437.

the vote of the qualified electors of the State and adopted by them. It thus rests for its authority on the voice of the people, and is a permanent expression of the will of the people. It establishes the framework of the government. It provides for a legislative department for the making of laws on the whole vast range of powers left with the States. It provides for an executive department for enforcing the laws, and a judicial department for their interpretation and application. It enumerates the more important rights of the people. It prescribes the qualifications for suffrage. It organizes the State into local districts, such as counties, and provides for the incorporation of cities and towns.

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## CHAPTER XIX.

### THE FORM AND NATURE OF GOVERNMENT IN THE UNITED STATES.

175. **Meaning of Government.**—What we mean by government is the ruling power in a State or nation. And by ruling power we mean the authorities in whom is intrusted by law the power to regulate the general affairs of the people, in order that the purposes of government may be carried out.

176. **Different Forms of Government.**—Government may have various forms. These forms, of which only the three principal ones need be mentioned, are distinguished from one another by the number and character of the persons constituting the ruling power. Thus (1), a **monarchy** is the form of government where one person holds the ruling power; (2) an **aristocracy** is a form of government where a particular class of the population, relatively small in number, conducts the ruling power; and (3) a **democracy** is a form of government where

the whole population, or a majority, or, at least, a relatively large proportion of the population, holds the ruling power.

**177. A Representative Democracy, or Republic.** Now, the government of the United States is a *democratic* form of government. That is to say, the determination of the conduct of the general affairs of the people lies with the majority of the people themselves. But it is impossible that the people should be able themselves, directly, to attend to the vast number of public questions that arise. Consequently, they choose agents or representatives to attend to these public questions for them. The form of government of the United States then becomes known as a *representative democracy*, or *republic*. This means that the people themselves choose their agents or representatives, and that these representatives attend to the affairs that constitute the purposes of government, but that the people do not undertake to manage these affairs directly. The people having established the form of government, all power rests ultimately with the people, but the work of carrying on the daily affairs of government they intrust to their representatives. By accepting the offices of government, these agents or representatives become responsible, for the proper discharge of their duties, to the people who elected them.

**178. A Federal Republic.**—But this is not all. There is a further division of labor in the government of the country. The existence of “States” is recognized, and each of these States has within itself a government. These two governments, one of the State and one of the nation, supplement each other, and together make one complete government. This result of making these two governments fit into each other, together making one



complete government, is accomplished by giving to the national government, through the Constitution of the United States, only the powers that are necessary for preserving the nation as such and promoting its general interests. All other matters are left to the State governments. These State affairs do not concern the nation as such, but refer to such things as the protection of the life and property of individuals, and the regulation of the rights and relations of individuals to each other. The national government, as to the powers which are confided to it, exercises them over the whole nation; any particular State government exercises its powers only within the boundaries of the State. There are forty-four State governments; there is but one national government.

Now, this division of the functions of government between the national and State governments, gives a new character to our form of government. This character is expressed by the term *federal*. The application of this term *federal* to a government signifies that it is an indissoluble union of States, whereby the powers that are national in their character are intrusted to one, the national government, and other powers are reserved to the other, or State governments. So, to make a complete description of our form of government, we shall have to say that it is a *federal representative democracy*, or *federal republic*. By saying that it is a *democracy*, we mean that the power of governing, or determining the manner of governing, lies with the people. Thus, the people of all the States adopted the Constitution of the United States, the instrument which determines the mode in which the government of the United States shall be carried on; and the people of all the States choose, from time to time, the President and the Congress of the United States as their agents or representatives for carrying on the government; that is, for managing the affairs of the nation. Likewise,

the people of each State adopt the Constitution of that State, the instrument which determines how the government of the State is to be carried on; and the people of each State choose, from time to time, the Governor and Legislature of the State as their agents or representatives for carrying on the actual affairs of the government of the State. Then, by saying that it is a *representative democracy*, or *republic*, we mean that the people do not carry on the daily affairs of the government themselves, but do themselves choose agents or representatives for this purpose. And by saying that it is a *federal republic*, we mean that the functions or powers of government are divided between a national government and State governments.

179. **The Union Indestructible.**—Take away these State governments, destroy the States themselves, and the republic will no longer be *federal*. On the other hand, again, by *federal* is meant that the States making up the Union cannot exist except as parts of the Union. The people of any one State are a part of the people of the whole United States. The people of all the States, that is, of the whole United States, have declared that those affairs which concern the whole nation shall be managed by the representatives of the whole nation; or, in other words, by the national or federal government; and, at the same time, they have declared that the affairs which concern the people in other respects, or, their local affairs, shall be left to be dealt with by the people of the several States. The perpetuity of the Union is thus guaranteed; and the preservation of the States is equally well guarded. As the Supreme Court of the United States has said, the United States is “an indestructible Union of indestructible States.”

## CHAPTER XX.

## THE ELEMENTS OF CIVIL LIBERTY.

§1. *The Relations between the Government and the Individual.***180. Rights and Duties between Individuals.—**

The primary function or duty of government is to protect each individual in the enjoyment of his rights. To do this it must require of each individual the performance of certain duties. Therefore, the government must require of each man the performance of such duties as are a condition of the enjoyment of his rights. Society is founded on a mutual give and take. The supposition is that each individual shall render to his fellow men an equivalent for what he receives from them.

The obligations which a man is required to observe are, for the most part, negative in their character. So long as he does not interfere with the enjoyment of other persons' rights, no active duties are required of him. But if he does trespass upon the rights of another person, then it is the function of government to correct that interference so far as it may be able, and to take steps, by the punishment of the offender, to prevent a recurrence of the wrong.

**181. Rights and Duties between Government and Individuals.—**Government being thus an institution for the protection of rights, a relation arises between the government and each individual. There are rights which the government has against the individual, and there are duties which the government owes to him. In like manner each individual has rights against the government, and to the government he owes certain duties.

**182. Rights of the Government.**—As between the government and the individual, the principal right which the government has is to the payment of the taxes which are necessary for the carrying out of its purposes. And the principal duty of the individual is the payment of these taxes. There is also the right of the government, in its hour of peril, to demand the services of all able-bodied men for its defense and preservation, and there is the duty on the part of such persons to respond to this call. Furthermore, in a free country like ours, these duties of the individual go farther, and it is a moral obligation of the highest kind for each individual to take a keen interest in the honor, integrity, and well-being of the government, and of each voter to exercise his right of selecting the officers of the government and of thereby directing the policy of the country.

**183. Duties of the Government.**—The chief duty which the government owes to the individual is the assurance to him of the largest amount of liberty consistent with the liberty of other individuals. This main duty of the government consists in protecting the individual against the unlawful acts of other persons and also against the illegal or tyrannical acts of the agents of the government itself.

Now, we think that in the United States, under the two Constitutions that govern each person, the Constitution of the United States and the Constitution of his own State, each individual is better protected in his rights, that is, has a larger amount of liberty, than the individual has in other countries. In this chapter we shall seek to find out what are the principal rights which our Constitutions guarantee us, and how it happened that these Constitutions could and did provide for the security of these rights.

§ 2. *History of Personal Rights in England.*

184. **Relation between English and American History.**—We know that the history of the United States is very closely connected with the history of England. We know that Americans and Englishmen belong to the same race. We know that the strip of Atlantic seaboard from which has been developed our great American territory was peopled by Englishmen, and once formed part of the British Empire. All the laws and institutions of English America were in the first place brought by our forefathers from England. Planted in a new soil, far away from the mother country, these laws and institutions, retaining still a likeness to the institutions of England, formed a growth of their own. And so, although it has its roots deep down in English history, the tree which shelters us is truly American. We ought never to forget that the reason why this tree of freedom is so vigorous, the reason why it has been able to extend its branches so far as to cover and protect us all, the reason why it has withstood the many storms that have assailed it, is because it has its roots so deeply imbedded in the history of our race.

185. **The Chief Personal Rights.**—The rights which are generally regarded as of the first importance, and which the government guarantees to all persons composing the nation, are commonly called the right of personal security, the right of personal liberty, the right of enjoying private property, and the right of religious belief and worship.

186. **Tendency of Government to become Tyrannical.**—We may consider it the object of all governments to protect the people in the enjoyment of these rights. Yet history shows us that it is the tendency of nearly all governments to violate or avoid their duties and to over-

ride or neglect the rights of the people. The tendency to become tyrannical has been shown in English history as well as in the history of other countries. The kings gathered into their hands all authority, exercising it arbitrarily, and violating the rights of the people. The people claimed that they ought by law to have the enjoyment of their personal rights; but the kings continually disregarded their remonstrances.

187. **Restraints upon the Government.**—The first climax came in 1215. Beginning with the Magna Charta of that date, along from generation to generation, as great landmarks in English history, we find the kings and Parliaments making written acknowledgments of these rights of the people.

These written compacts between the kings and the people are limitations upon the powers of the government and are guarantees of the rights of the people. They are really fragmentary parts of a Constitution.

Some account of these safeguards of liberty will show us the origin of many of the most valued of our American rights.

188. **Magna Charta.**—The Magna Charta was extorted from King John in 1215 by the barons of England. The body of the people had not reached a high enough stage of education, independence, and union to assert their rights for themselves. This venerable and famous document acknowledges and guarantees the following rights:

No tax should be levied without the authority of a great council summoned by the king. This council grew into the Parliament of England, and is the remote ancestor of our American Congress and our own State Legislature. By this provision the power of taxation was committed to Parliament. This power is the key

to all other powers, and it opened to Parliament the door to complete control of the government. In this provision of Magna Charta we have, too, the assertion of the principle that taxes are only to be levied by the representatives of the people. The violation of this principle by the English government was one of the chief causes of the American war of independence.

Merchants were to be allowed to carry on their business without being subject to arbitrary licenses and tolls imposed by the king.

All freemen were to be allowed to go out of the country and return to it at pleasure.

A man might dispose of his property by will in such manner as he saw fit. In case a man died without making a will, his property should go to his legal heirs.

The king's officers were prohibited from taking a man's property without his consent. Courts of justice were to remain in fixed and known spots, and were not to be moved about the country to suit the pleasure of the king. They were to be open to every one without fear or favor, and justice was no longer to be refused or delayed. No one was to be put on trial from mere rumor or suspicion, but only upon the evidence of lawful witnesses.

Excessive fines were forbidden. They were to be in proportion to the fault committed, and no man was to be utterly ruined by a fine.

And, most important of all, no freeman was to be arrested, or imprisoned, or deprived of his property, or outlawed, or banished, or suffer injury of any kind, except by the lawful judgment of his peers (jury) or in accordance with the law of the land.

The tendency to disregard these provisions of Magna Charta was so great that later kings of England were compelled to ratify them as many as thirty times. They form the basis of our personal and political liberty.

The more important of the acknowledgments, in subsequent years in England, of the rights of the people are the Petition of Right, the Habeas Corpus Act, the Bill of Rights, and the Act of Settlement.

189. **The Petition of Right.**—The Petition of Right, passed by Parliament in 1628, declared that all loans extorted from the people by the king, all taxes levied without the consent of Parliament, all arbitrary arrests and imprisonments, the quartering of soldiers on private citizens, trials and condemnations by martial law, were illegal and tended to overthrow the rights of the people and the fundamental laws of the country.

190. **The Habeas Corpus Act.**—The kings had caused the guarantees of the Magna Charta and the Petition of Right to be disregarded by denying any redress to persons who had been imprisoned, no matter how unjustly, by the king's officers. The Habeas Corpus Act, passed during the reign of Charles II., was intended to correct this abuse and to afford the means of release in case of illegal imprisonment.

The writ of *habeas corpus*, provided for by this Act, is an order from a judge to an officer who holds a person in custody, to bring the prisoner into court on a certain day. The judge then examines into the matter and decides whether the person has been rightfully or wrongfully arrested. If he finds him to have been wrongfully deprived of his liberty, he orders him to be set free; but if he finds him to have been rightfully detained, he has him sent back to prison.

191. **The Bill of Rights and the Act of Settlement**, enacted by Parliament in the reign of William III., repeated the declarations of the previous statutes, adding some others.



192. **America Learns England's Lesson.**—This series of great laws passed from time to time by the Parliament of England make up the important part of what may be called the Constitution of England. It formed part of the common law of England, and was, therefore, the law of the colonies in America. The lesson to be learned from this history is that England found it necessary to have these great laws enacted in order to have the liberties of the people protected. Consequently, when the Americans declared themselves independent and found it necessary to establish a government, they decided to make a Constitution which should be the supreme law of the land, and which should declare just what the officers of the government might do and what they might not do.

§ 3. *Protection of Personal Rights in the United States.*

193. **Constitutional Guarantees.**—The operation of the Constitution itself is to restrain the action of the government within certain definite limits. - But besides this general mode of setting barriers to the possible tyrannical action of the government, the Constitution proceeds in divers places to define and guarantee the rights which English history had taught were peculiarly liable to abuse. The Constitutions of the several States reinforce these securities with additional bulwarks.

Thus, the Constitution of the State of California declares the existence of these rights in these words: "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness." The Federal Constitution insures the security of these rights by declaring that "no person

shall be deprived of life, liberty, or property without due process of law.”

194. **Right of Personal Security.**—Under the right of personal security are included security of life, of body and limb, and of reputation. No man shall be deprived of these without due process of law. This means that no person may be held for a capital offense, or for any offense above the common-law degree of larceny, except upon the presentment, or indictment, of a grand jury, or the regular mode provided by law. In criminal trials the accused shall be entitled to a speedy and public trial by an impartial jury of the State and district in which the crime shall have been committed. He shall be informed of the nature and cause of the accusation. He shall be confronted by the witnesses who testify against him; he may compel the attendance of witnesses in his favor; and he shall not be compelled to be a witness against himself. Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted. No man shall be twice put in jeopardy of his life for the same offense; that is to say, if, after a proper trial before a proper tribunal, he has been acquitted or not convicted, he shall not be put on trial again for the same offense.

195. **Right of Personal Liberty.**—The right of freely moving from place to place according to one’s inclination is a right of the highest importance. The writ of *habeas corpus* affords a means of speedy redress for any violation of this right.

As a further means of securing the freedom of the individual, the Constitution prohibits the quartering of soldiers in any house in time of peace without the owner’s consent, or in time of war otherwise than in the manner provided by law. The Constitution upholds

the right of bearing arms, and the right of publicly assembling and petitioning the government for a redress of grievances.

**196. Bills of Attainder.**—Both Congress and the State Legislatures are forbidden to pass bills of attainder. These were common in English history, and, between the years 1776 and 1789, were not unknown in this country. By a bill of attainder the legislative authority took upon itself to sentence a man charged with an offense, usually of a political nature. The sentence carried with it the penalty of death and the confiscation of the man's property, and it placed a stain upon the blood of his descendants so that they could not inherit property. Besides these cruel features there is a special wrong in the fact that such proceedings belong to courts of justice and not to legislative bodies. Legislative bodies can never in such cases rid themselves of their political character, and can not give that free, full, and fair trial to which every accused person is entitled.

**197. Ex Post Facto Laws.**—The Constitution also prohibits the passing of what are called *ex post facto* laws. Such laws are laws which make an act punishable that was not punishable when the act was committed, or which increase the punishment for an act after its commission.

**198. Right to Reputation.**—Not only are a man's life and body protected but his character as well. The freedom of speech and of the press are guaranteed by both the Federal and State Constitutions, but any abuse of this right by the false and unjustifiable slander or libel of a man's character may be punished.

**199. Right of Religious Belief.**—The very essence of our government is that there shall be no interference

by the State in religious matters. All our institutions shall be non-sectarian in their character. While the government is prohibited from showing any special favors to any one form or sect of religion, our Constitutions guarantee to every individual the right of religious belief and worship according to his own conscience.

**200. Right of Private Property.**—As to the enjoyment of property, the Federal Constitution, reinforced by the Constitution of each State, provides that property shall not be taken from the individual owner without due process of law. Under this right a man may acquire, use, and dispose of his property in such manner as he sees fit so long as he does not thereby violate any law or injure any other individual.

**201. Taxation and Eminent Domain.**—But a man's private property may be subject to taxation by the government in order that a government may have means of paying its debts and providing for the public welfare. It is also subject to the right of eminent domain. This latter right means that the State is regarded as the ultimate owner of all property within its boundaries and may assert its ownership whenever necessary. The State exercises this right when it requires the owner of property to give it up for a public use. But the Constitution requires that in such case adequate compensation must be made to the owner.

**202. The Inviolability of Private Contracts.**—The Federal Constitution prohibits any State from passing any law which shall impair the obligation of contracts. This means, for instance, that when the Legislature of a State has granted a charter to a corporation, it shall not violate that charter arbitrarily; or that the Legislature shall not revoke a grant of land, or shall not, by its laws, cause

one man to lose a rightful claim which he may have against another man.

**203. General Warrants.**—General warrants for the arrest of persons, the search of houses, or the seizure of papers are prohibited. Warrants for these purposes must be issued only on probable cause, supported by oath, and must describe the place to be searched or the person or thing to be seized. This is a recognition of the old English principle that “a man’s house is his castle;” that is to say, that his house may not be invaded arbitrarily. This principle is extended to the protection of a man’s correspondence while going through the post office.

**204. Rights of Citizens of One State in Other States.**—The Federal Constitution also provides that the citizens of one State shall enjoy equal rights in every other State. It provides, too, that all public acts, records, and judicial proceedings of one State shall be as much respected by another State as are its own records and proceedings. These provisions prevent any discrimination being made by one State against the citizens or laws of another State.

## PART V.

## CONSTITUTION OF THE UNITED STATES.

## PREAMBLE.

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

## ARTICLE I.

## LEGISLATIVE DEPARTMENT.

*Section I. Congress.*

*Legislative Powers* (pp. 47, 59).—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Section II. House of Representatives.*

1. (a) *Election of Representatives* (p. 49).—The House of Representatives shall be composed of members chosen every second year by the people of the several States,

(b) *Who May Vote for Representatives* (p. 49).—And the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. *Qualifications for Representatives* (p. 48).—No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

See, also, Sect. 6 of this Article, and Sect. 3 of the Fourteenth Amendment.

3. *Apportionment of Representatives* (p. 48).—\* 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.<sup>1</sup> \*

This provision has been superseded by the following clause of the Fourteenth Amendment:

[Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.<sup>2</sup>]

*Census* (p. 48).—The actual enumeration shall be made within three years after the first meeting of the

<sup>1</sup> Clauses between \*\* are obsolete or superseded.

<sup>2</sup> Clauses in [ ] are interpolated from other parts of the Constitution.

Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.

*Number of Representatives* (p. 48).—The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; \*and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.\*

4. *Vacancies, How Filled* (p. 51).—When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. (a) *Officers of the House* (p. 58).—The House of Representatives shall choose their Speaker and other officers;

(b) *Impeachments* (p. 74).—And shall have the sole power of impeachment.

### *Section III. Senate.*

1. (a) *Number of Senators* (p. 51).—The Senate of the United States shall be composed of two Senators from each State,

(b) *How Elected* (p. 51).—Chosen by the Legislature thereof, for six years;

(c) *Voting in the Senate* (p. 52).—And each Senator shall have one vote.

2. (a) *Senators Divided into Three Classes* (p. 51).—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;

(b) *Vacancies, How Filled* (p. 53).—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.

3. *Qualifications for Senators* (p. 51).—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 that State for which he shall be chosen.

See, also, Sect. 6 of this Article, and Sect. 3 of the Fourteenth Amendment.

4. *President of the Senate* (p. 52).—The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they shall be equally divided.

5. *Other Officers and President pro tempore* (p. 53).—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.

6. *Trial of Impeachments* (p. 74).—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.

7. *Judgment in Cases of Impeachment* (p. 74).—Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

*Section IV. Elections of Senators and Representatives.  
Meetings of Congress.*

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

2. *Congress to Meet Annually* (p. 54).—The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

*Section V. Powers and Duties of Each House of Congress.*

1. (a) *Power as to Qualifications of Members* (p. 55).—Each house shall be the judge of the elections, returns, and qualifications of its own members,

(b) *Quorum* (p. 53).—And a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. (a) *Power as to Rules of Proceedings* (pp. 49, 52).—Each house may determine the rules of its proceedings,

(b) *Power to Punish and Expel Members* (p. 55).—Punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. (a) *Journal* (p. 55).—Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy;

(b) *Yeas and Nays* (p. 55).—And the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. *Adjournment* (p. 55).—Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

*Section VI. Compensation, Privileges, and Disabilities of Senators and Representatives.*

1. (a) *Compensation* (p. 55).—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.

(b) *Privileges* (p. 55).—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.

2. (a) *Disability to Hold Other Offices* (p. 55).—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;

(b) *Persons Holding Other Offices not to be Senators or Representatives* (p. 55).—And no person holding any office under the United States shall be a member of either house during his continuance in office.

See, also, Sect. 3 of the Fourteenth Amendment.

### *Section VII. Mode of Passing Laws.*

1. *Special Provision as to Revenue Bills* (p. 56).—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.

2. *Every Bill to Become a Law Must Pass Both Houses* (p. 55).—Every bill which shall have passed the House of Representatives and the Senate, shall:

*And be Presented to the President.*—Before it becomes a law, be presented to the President of the United States;

*Who may Approve and Sign It.*—If he approve, he shall sign it,

*Or Veto It* (p. 82).—But if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it.

*Veto, How Overcome.*—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.

*A Bill, not Returned by the President, When to Become a Law.*—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,

*And When Not.*—Unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. *The Same Rules Applicable to Orders, Resolutions, and Votes of the Two Houses.*—Every order, resolution, or vote, to which the concurrence of the Senate and the 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.

*Section VIII. The Powers Granted to Congress.*

The Congress shall have power (p. 59) (see Sect. 1 of this Article):

1. *Taxation* (pp. 60, 62).—To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. *Loans* (pp. 60, 63).—To borrow money on the credit of the United States;

3. *Commerce* (pp. 61, 69).—To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. *Naturalization* (pp. 60, 62, 92, 94, 96); *Bankruptcy* (pp. 61, 72).—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. *Coin* (pp. 60, 63, 64); *Weights and Measures* (pp. 61, 73).—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. *Counterfeiting* (pp. 60, 63, 65).—To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. *Post Offices* (pp. 61, 70).—To establish post offices and post roads;

8. *Patents and Copyrights* (pp. 61, 73).—To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

9. *Courts* (p. 60).—To constitute tribunals inferior to the Supreme Court;

See, also, Sect. 1, Art. III.

10. *Piracies, etc.* (p. 68).—To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations;

11. *War* (pp. 61, 66, 67).—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. *Army* (pp. 61, 67, 68).—To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. *Navy* (pp. 61, 67).—To provide and maintain a navy;

14. *Military and Naval Rules* (pp. 61, 67).—To make rules for the government and regulation of the land and naval forces;

15, 16. *Militia* (pp. 61, 68).—To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

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

17. (a) *Federal District* (pp. 61, 74).—To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States;

(b) *Other Places* (pp. 61, 74).—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

18. *To Carry Out Powers Granted to the United States* (p. 59).—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.

Other powers given to Congress in various parts of the Constitution are as follows:

[(19) *To Fix the Time of Choosing Electors and of Casting Electoral Vote* (p. 77).—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. (Sect. 1, Par. 4, Art. II.)

(20) *To Arrange the Presidential Succession* (p. 79).—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. (Sect. 1, Par. 6, Art. II.)

(21) *To Regulate Appellate Jurisdiction of the Supreme Court* (p. 88).—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 as to law and fact, with such exceptions and under such regulations as the Congress shall make. (Sect. 2, Par. 2, Art. III.)

(22) *To Declare the Punishment of Treason* (p. 74).—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. (Sect. 3, Par. 2, Art. III.)

(23) *To Authenticate State Records* (p. 127).—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. (Sect. 1, Art. IV.)

(24) *To Admit New States* (pp. 61, 71).—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. (Sect. 3, Par. 1, Art. IV.)

(25) *To Govern the Property and Territory of the Union* (pp. 61, 71).—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. (Sect. 3, Par. 2, Art. IV.)

(26) *To Propose Amendments and Call Convention* (p. 45).—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. (Art. V.)



(27) *To Enforce Amendments.*—The Congress shall have power to enforce, by appropriate legislation, the provisions of (the Thirteenth, Fourteenth, and Fifteenth Amendments).]

See these amendments.

*Section IX. Limitations on the Powers Granted to the United States.*

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

2. *Habeas Corpus* (p. 124).—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.

3. *Bill of Attainder* (p. 125); *Ex Post Facto Law* (p. 125).—No bill of attainder or ex post facto law shall be passed.

See Sect. 10, Par. 1, this Article, for similar prohibition on the States.

4. *Direct Taxes to be in Proportion to Census* (p. 62).—No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

For provision as to the census, see Sect. 2, Par. 3, this Article.

5. *Duties on Exports* (pp. 62, 70).—No tax or duty shall be laid on articles exported from any State.

See Sect. 10, Par. 2, this Article, for similar prohibition on the States.

6. *No Commercial Discriminations to be Made between States* (p. 70).—No preference shall be given, by any

regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

7. (a) *No Public Money to be Drawn Except as Authorized by Law.*—No money shall be drawn from the treasury but in consequence of appropriations made by law;

(b) *Accounts to be Kept.*—And a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. (a) *Titles of Nobility.*—No title of nobility shall be granted by the United States;

See Sect. 10, Par. 1, this Article, for similar prohibition on the States.

(b) *Presents, etc., from Foreign Powers.*—And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Other prohibitions on the powers of the United States are contained in the first eight amendments, and in the Fifteenth Amendment, as follows:

[*Freedom of Religion* (p. 125), *of Speech* (p. 125); *Right of Assembling* (p. 125), *of Petition* (p. 125).—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. (First Amendment.)

*Right to Bear Arms* (p. 124).—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. (Second Amendment.)

*Quartering of Soldiers* (p. 124).—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. (Third Amendment.)

*Searches and Seizures* (p. 127); *Warrants* (p. 127).—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. (Fourth Amendment.)

*Trials for Crimes* (p. 124); *Rights of Life, Liberty, and Property* (p. 124).—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. (Fifth Amendment.)

*Rights of Defendants in Criminal Cases* (p. 124).—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (Sixth Amendment.)

*Trials in Civil Cases*.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise reëxamined in any court of the United States than according to the rules of common law. (Seventh Amendment.)

*Bail, Fines, Punishments* (p. 124).—Excessive bail shall not be required, nor excessive fines imposed, nor cruel

and unusual punishments inflicted. (Eighth Amendment.)

*Right of Suffrage* (p. 95).—The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude. (Sect. 1, Fifteenth Amendment.)]

### *Section X. Powers Prohibited to the States.*

To understand the force of these prohibitions, the Tenth Amendment should be read, as follows:

[The powers not granted to the United States by the Constitution (*those granted are given in Section 8, this Article*), nor prohibited by it to the States (*as given in this section*), are reserved to the States, respectively, or to the people.]

#### *A. Absolute Prohibitions.*

##### 1. No State shall:

(a) *Treaty* (p. 111).—Enter into any treaty, alliance, or confederation;

For the power to make treaties, see Art. II, Sect. 2, Par. 2.

(b) *Letters of Marque* (p. 111).—Grant letters of marque and reprisal;

For the power to grant such letters, see Sect. 8, Par. 11, this Article.

(c) *Money* (p. 111).—Coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts;

For power of coinage of money, see Sect. 8, Par. 5, this Article.

(d) *Bill of Attainder* (pp. 111, 125).—*Ex Post Facto Law* (p. 125).—Pass any bill of attainder, *ex post facto* law;

For similar prohibition on Congress, see Sect. 9, Par. 3, this Article.

(e) *Impairing Contracts* (pp. 111, 126).—Or law impairing the obligation of contracts;

(f) *Titles of Nobility* (p. 111).—Or grant any title of nobility.

For similar prohibition on the United States, see Sect. 9, Par. 8, this Article.

Other limitations, as follows, are laid on the powers of the States by the Thirteenth, Fourteenth, and Fifteenth Amendments:

*Prohibition of Slavery.*—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (Sect. 1, Thirteenth Amendment.)

*Privileges and Immunities of Citizens; Rights of Life, Liberty, and Property* (p. 123).—No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (Sect. 1, Fourteenth Amendment.)

*Right of Suffrage* (p. 95).—The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude. (Sect. 1, Fifteenth Amendment.)]

*B. Prohibitions, unless by Consent of Congress.*

2. *Duties on Imports and Exports* (pp. 70, 111).—No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

For the power of Congress to lay duties on imports, see Sect. 8, Par. 1, this Article; for the prohibition on Congress as to duties on exports, see Sect. 9, Par. 5, this Article.

3. No State shall, without the consent of Congress:

(a) *Tonnage Duties* (pp. 70, 111).—Lay any duty on tonnage;

(b) *Troops and Ships of War* (p. 111).—Keep troops or ships of war in time of peace;

For the power of Congress over the army and navy, see Sect. 8, Par. 12, 13, 14, this Article.

(c) *Compacts with Other States or Powers* (p. 111).—Enter into any agreement or compact with another State or with a foreign power;

(d) *War; Invasion* (p. 111).—Or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

For the power of Congress to declare war and repel invasions, see Sect. 8, Par. 11 and 15, this Article.

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## ARTICLE II.

### EXECUTIVE DEPARTMENT.

#### *Section I. President and Vice-President.*

1. (a) *Executive Power Vested in President* (p. 76).—The executive power shall be vested in a President of the United States of America.

(b) *Term of Office*.—He shall hold his office during the term of four years, and, together with the Vice-President chosen for the same term, be elected as follows:

2. (a) *Appointment and Number of Presidential Electors* (p. 77).—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.

(b) *Who May Not be Electors.*—But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector. See, also, Par. 3 of the Fourteenth Amendment.

3. *Mode of Electing the President and Vice-President* (p. 77).—\*The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately 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 vote 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.\*

This has been superseded by the Twelfth Amendment, as follows :

[(a) *Voting of the Electors.*—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;

(b) *Electoral Votes to be Sent to Washington.*—And they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate.

(c) *Counting the Electoral Votes.*—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

(d) *Number of Electoral Votes Necessary to Elect the President.*—The person having the greatest number of votes for President shall be the President, if such a number be a majority of the whole number of Electors appointed;

(e) *Election of President by House of Representatives, When and How* (p. 79).—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.

(f) *When no Election of President by either Electors or House of Representatives, Vice-President to act as President.* And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then



the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

See Sect. 1, Par. 6, Art. II. -

(g) *Number of Electoral Votes Necessary to Elect the Vice-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,

(h) *Election of Vice-President by Senate, When and How* (p. 79).—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.

(i) *Qualifications for Vice-President.*—But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.]

For qualifications for President, see Sect. 1, Par. 5, Art. II., and Par. 3 of the Fourteenth Amendment.

4. *Time of Choosing Electors and of Casting Electoral Vote* (p. 77).—The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. *Qualifications for President* (pp. 63, 77).—No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

See, also, Par. 3 of the Fourteenth Amendment.

6. *Presidential Succession* (p. 79).—In case of the removal of the President from office, or of his death,

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

7. *Salary of President* (p. 77).—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.

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

## *Section II. Powers of the President.*

1. (a) *Commander-in-Chief* (p. 80).—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;

(b) *May Require Opinions from Cabinet*.—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;

(c) *May Grant Pardons* (p. 80).—And he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. (a) *Treaties* (pp. 66, 80).—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;

(b) *Appointments* (pp. 80, 81).—And he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

3. *Power to Fill Vacancies* (p. 81).—The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

### *Section III. Further Powers and Duties of the President.*

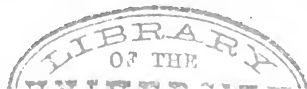
(a) *Shall Send Messages to Congress* (p. 82).—He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.

(b) *May Call Special Sessions of Congress, or of Either House* (pp. 54, 82).—He may, on extraordinary occasions, convene both houses, or either of them;

For meetings of Congress, see Sect. 4, Par. 2. Art. I.

(c) *May Adjourn Congress, When* (p. 82).—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;

For adjournment of the houses of Congress, see Sect. 5, Par. 4, Art. I.



(d) *Shall Receive Ambassadors* (p. 80).—He shall receive ambassadors and other public ministers;

(e) *Shall Have the Laws Executed* (p. 80).—He shall take care that the laws be faithfully executed;

(f) *Shall Commission Officers*.—And shall commission all the officers of the United States.

*Section IV. Impeachment of President and Other Officers* (pp. 74, 90).

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.

For power of impeachment, see Sect. 2, Par. 5, Art. I; for trial of impeachments, see Sect. 3, Par. 6, Art. I.

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## ARTICLE III.

### JUDICIAL DEPARTMENT.

*Section I. Courts and Judges.*

(a) *Supreme Court* (p. 87).—The judicial power of the United States shall be vested in one Supreme Court,

(b) *Inferior Courts* (pp. 65, 87).—And in such inferior courts as the Congress may, from time to time, ordain and establish.

(c) *Term of Office of Judges* (p. 90).—The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior,

(d) *Salary of Judges* (p. 90).—And shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

*Section II. Jurisdiction of the United States Courts.*

1. *Cases that May Come before the United States Courts* (p. 89).—The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

This provision has been modified by the Eleventh Amendment, as follows.

[The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by the citizens of another State, or by citizens or subjects of any foreign State.]

2. *Jurisdiction of the Supreme Court* (p. 88).—(a) *Original Jurisdiction*.—In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.

(b) *Appellate Jurisdiction*.—In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. *Trial for Crimes* (p. 124).—(a) *To be by Jury*.—The trial of all crimes, except in cases of impeachment, shall be by jury;

(b) *In State Where Committed.*—And such trial shall be held in the State where the said crimes shall have been committed;

(c) *If not Committed in any State.*—But when not committed within any State, the trial shall be at such place or places as the Congress may, by law, have directed.

The Fifth Amendment provides :

[*Trials for Crimes* (p. 124).—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.]

The Sixth Amendment provides :

[*Rights of Defendants in Criminal Cases* (p. 124).—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.]

The Seventh Amendment provides :

[*Trials in Civil Cases.*—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise reëxamined in any court of the United States than according to the rules of common law.]

The Eighth Amendment provides:

[*Bail, Fines, and Punishments* (p. 124).—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.]

### *Section III. Treason.*

1. (a) *Treason Defined* (p. 74).—Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

(b) *Conviction* (p. 74).—No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. *Punishment* (p. 74).—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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## ARTICLE IV.

### THE STATES AND THE FEDERAL GOVERNMENT.

#### *Section I. State Records.*

*Interstate Recognition of State Records* (p. 127).—Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

#### *Section II. Privileges of Citizens; Extradition of Fugitives.*

1. *Interstate Privileges of Citizens* (p. 125).—The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

This provision is enlarged by the following provision from the Fourteenth Amendment :

[No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.]

2. *Fugitives from Justice* (p. 38).—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.

3. *Fugitives from Service*.—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.

This provision is of little value since slavery was abolished.

### *Section III. New States; Territories.*

1. *Admission of New States* (pp. 61, 71).—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.

2. *Control of the Property and Territory of the Union* (pp. 61, 71).—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 con-



strued as to prejudice any claims of the United States, or of any particular State.

*Section IV. Federal Protection to the States.*

*Republican Government Guaranteed* (p. 72).—The United States shall guarantee to every State in this Union a republican form of government,

*Protection Against Invasion and Domestic Violence* (p. 72).—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.

For power of the States in case of invasion, see Sect. 10, Par. 5, Art. I.

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## ARTICLE V.

### MODE OF AMENDING THE CONSTITUTION (p. 45).

1. (a) *Amendments, How Proposed*.—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,

(b) *Amendments, How Adopted*.—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;

(c) *Restrictions on Power of Amending*.—*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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## ARTICLE VI.

PUBLIC DEBT; SUPREMACY OF THE CONSTITUTION; OATH OF OFFICE; RELIGIOUS TEST.

1. *The Public Debt.*—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.

Sect. 4 of the Fourteenth Amendment, as follows, relates to the debt incurred during the Civil War:

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

2. *Supreme Law of the Land* (p. 46).—This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. (a) *Oath of Office.*—The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution;

(b) *Religious Test*.—But no religious test shall ever be required as a qualification to any office or public trust under the United States.

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## ARTICLE VII.

## RATIFICATION OF CONSTITUTION (p. 45).

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.

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## AMENDMENTS.

## FIRST AMENDMENT.

*Freedom of Religion* (p. 125).—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

*Freedom of Speech* (p. 125).—Or abridging the freedom of speech, or of the press;

*Right to Assemble* (p. 125).—Or the right of the people peaceably to assemble;

*Right of Petition* (p. 125).—And to petition the government for a redress of grievances.—[Adopted in 1791.

## SECOND AMENDMENT.

*Right to Bear Arms* (p. 124).—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.—[Id.

## THIRD AMENDMENT.

*Quartering of Soldiers* (p. 124).—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.—[Id.

## FOURTH AMENDMENT.

*Searches and Seizures* (p. 127).—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

*Warrants* (p. 127).—And no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.—[Id.

## FIFTH AMENDMENT.

*Criminal Proceedings* (p. 124).—(a) *Indictment, When Necessary*.—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;

(b) *No Person to be Twice Tried for Same Offense*.—Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;

(c) *Nor Compelled to be a Witness against Himself*.—Nor shall be compelled in any criminal case to be a witness against himself;

(d) *Nor Deprived of Life, etc., Without Proper Trial*.—Nor be deprived of life, liberty, or property, without due process of law;

This applied only to the government of the Union; the similar provision in the Fourteenth Amendment applies to the States.

*Eminent Domain* (p. 126).—Nor shall private property be taken for public use without just compensation.—[Id.]

## SIXTH AMENDMENT.

*Criminal Proceedings* (p. 124).—(a) *Speedy and Public Trial*.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial,

(b) *Jury*.—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;

(c) *Charges*.—And to be informed of the nature and cause of the accusation;

(d) *Witnesses*.—To be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,

(e) *Counsel*.—And to have the assistance of counsel for his defense.—[Id.]

## SEVENTH AMENDMENT.

*Jury Trial in Civil Cases*.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise reëxamined in any court of the United States than according to the rules of common law.—[Id.]

## EIGHTH AMENDMENT.

*Bail, Fines, Punishments* (p. 124).—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.—[Id.]

## NINTH AMENDMENT.

*Rights Retained by the People*.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.—[Id.]

## TENTH AMENDMENT.

*Powers Reserved* (pp. 58, 59, 111).—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.—[Id.]

## ELEVENTH AMENDMENT.

*Limitation of the Judicial Power.*—The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.—[Adopted in 1798.]

## TWELFTH AMENDMENT.

*Election of President and Vice-President* (p. 77).

For appointment of Electors, see Sect. 4, Par. 2, Art. II.

*Voting of the Electors.*—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,

*Electoral Votes to be Sent to Washington.*—And they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate.

*Counting the Electoral Votes.*—The President of the Senate shall, in the presence of the Senate and House of

Representatives, open all the certificates, and the votes shall then be counted.

*Number of Electoral Votes Necessary to Elect the President.*—The person having the greatest number of votes for President shall be the President, if such a number be a majority of the whole number of Electors appointed;

*Election of President by House of Representatives, When and How.*—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.

*When no Election of President by either Electors or House of Representatives, Vice-President to act as President.*—And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

See Sect. 1, Par. 6, Art. II.

*Number of Electoral Votes Necessary to Elect the Vice-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,

*Election of Vice-President by Senate, When and How.*—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.

*Qualifications for Vice-President.*—But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.—[Adopted in 1804.]

For qualifications for President, see Sect. 1, Par. 5, Art. III., and Sect. 3 of the Fourteenth Amendment.

#### THIRTEENTH AMENDMENT.

1. *Prohibition of Slavery.*—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. *Power of Congress to Enforce this Amendment.*—Congress shall have power to enforce this article by appropriate legislation.—[Adopted in 1865.]

#### FOURTEENTH AMENDMENT.

*Citizenship; Rights of Citizens; Representation; Disqualifications for Office; Public Debt.*

1. *Citizenship; Rights of Citizens* (pp. 62, 92).—(a) *Citizenship Defined.*—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

The determination of citizenship had hitherto been left to the States.

(b) *Protection of Citizens of the United States from State Action.*—No State shall make or enforce any law



which shall abridge the privileges or immunities of citizens of the United States;

For interstate privileges of citizens of a State, see Sect. 2, Par. 1, Art. IV.

(c) *Protection of Life, Liberty, and Property.*—Nor shall any State deprive any person of life, liberty, or property, without due process of law;

For a similar prohibition on the federal government, see the Fifth Amendment.

(d) *Equal Protection of the Laws.*—Nor deny to any person within its jurisdiction the equal protection of the laws.

2. (a) *Apportionment of Representatives* (p. 48).—Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

(b) *Reduction of Representation in Certain Cases.*—But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. *Disqualification for Public Office because of Participation in Rebellion.*—No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under

the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. (a) *Guarantee of the Public Debt.*—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned.

(b) *Debt in Aid of Rebellion Illegal.*—But neither the United States, nor any State, shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. *Power of Congress to Enforce the Fourteenth Amendment.*—The Congress shall have power to enforce by appropriate legislation the provisions of this article.— [Adopted in 1868.]

#### FIFTEENTH AMENDMENT.

1. *Right of the Citizens of the United States to Vote Protected* (p. 95).—The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

2. *Power of Congress to Enforce this Amendment.*—The Congress shall have power to enforce this article by appropriate legislation.— [Adopted in 1870.]

## ACT OF CONGRESS ADMITTING CALIFORNIA.

SEPTEMBER 9, 1850.

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1. The State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

2. The said State of California is admitted into the Union upon the express condition that the people of said State, through their Legislature, or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax, or assessment of any description whatsoever, upon the public domain of the United States; and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor; *provided*, that nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California, as articles of compact in the ordinance adopted by the convention which formed the Constitution of that State.

3. All the laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California as elsewhere within the United States.

## CONSTITUTION OF THE STATE OF CALIFORNIA.

## PREAMBLE.

*Purpose of the Constitution.*—We, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

## ARTICLE I.

## DECLARATION OF RIGHTS.

SECTION 1. *Rights of Man.*—All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness. (Compare with this the Declaration of Independence.)

SECT. 2. *Government for and by the People.*—All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it. (Compare the Declaration of Independence.)

SECT. 3. *California a Part of the Union.*—The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land. (See U. S. Const., Art. VI., Par. 2.)

SECT. 4. *Freedom of Religion.*—The free exercise and enjoyment of religious profession and worship, without

discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State. (See U. S. Const., Amend. I.)

SECT. 5. *Habeas Corpus*.—The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension. (See U. S. Const., Art. I., Sect. 9, Par. 2.)

SECT. 6. *Bail.—Witnesses*.—All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned. (See U. S. Const., Amend. VIII.)

SECT. 7. *Jury Trial*.—The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court. (See U. S. Const., Amend. VI. and VII.)

SECT. 8. *Indictments; Informations; Grand Jury*.—Offenses heretofore required to be prosecuted by indict-

ment shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county. (See U. S. Const., Amend V.)

SECT. 9. *Freedom of Speech.—Libel Suits.*—Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause. (See U. S. Const., Amend. I.)

SECT. 10. *Freedom of Assembling and Petitioning.*—The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances. (See U. S. Const., Amend. I.)

SECT. 11. *Laws to be Uniform.*—All laws of a general nature shall have a uniform operation.

SECT. 12. *Military Subordinate to Civil Power.*—The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered

in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law. (See U. S. Const., Amend. III.)

SECT. 13. *Criminal Trials; Rights of the Accused.*—In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor 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. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial. (See U. S. Const., Amend. V. and VI.)

SECT. 14. *Rights of Private Property.*—Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for, the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law. (See U. S. Const., Amend. V.)

SECT. 15. *Imprisonment for Debt and for Militia Fines Forbidden.*—No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases

of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

SECT. 16. *Bills of Attainder; Ex Post Facto Laws; Obligation of Contracts.*—No bill of attainder, ex post facto law, or law impairing the obligations of contracts, shall ever be passed. (See U. S. Const., Art. I., Sect. 10, Par. 1.)

SECT. 17. *Rights of Foreigners.*—Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens.

SECT. 18. *Slavery Prohibited.*—Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State. (See U. S. Const., Amend. XIII.)

SECT. 19. *General Warrants.*—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (See U. S. Const., Amend. IV.)

SECT. 20. *Treason.*—Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court: (See U. S. Const., Art. III., Sect. 3, Par. 1.)

SECT. 21. *Special Privileges, Limitations on.*—No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legis-



lature, nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SECT. 22. *The Constitution Mandatory.*—The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SECT. 23. *Rights Retained by the People.*—This enumeration of rights shall not be construed to impair or deny others retained by the people. (See U. S. Const., Amend. IX.)

SECT. 24. *Property Qualification Forbidden.*—No property qualification shall ever be required for any person to vote or hold office.

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## ARTICLE II.

### SUFFRAGE AND ELECTIONS.

SECTION 1. *Who may Vote.—Who may not Vote.*—Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Querétaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.

SECT. 2. *Privileges of Voters.*—Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SECT. 3. *Voters, and Militia Duty.*—No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SECT. 4. *Residence of Voters in Certain Cases.*—For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

SECT. 5. *Elections to be by Ballot.*—All elections by the people shall be by ballot.

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### ARTICLE III.

#### DISTRIBUTION OF THE POWERS OF GOVERNMENT.

SECTION 1. *Three Departments of Government.*—The powers of the government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.

## ARTICLE IV.

## LEGISLATIVE DEPARTMENT.

SECTION 1. *The Legislative Power.*—The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: “The People of the State of California, represented in Senate and Assembly, do enact as follows.” (Compare U. S. Const., Art. I., Sect. 1.)

SECT. 2. *Sessions of the Legislature.*—The sessions of the Legislature shall commence at twelve o'clock M. on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty, shall be biennial, unless the Governor shall, in the interim, convene the Legislature by proclamation.

*Limitation on Length of Sessions.*—No pay shall be allowed to members for a longer time than sixty days, except for the first session after the adoption of this Constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced, in either house, after the expiration of ninety days from the commencement of the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two thirds of the members thereof.

SECT. 3. *Elections of Assemblymen.*—Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly, after the adoption of this Constitution, shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter members of the Assembly shall be chosen biennially, and their

term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature. (Compare U. S. Const., Art. I., Sect. 2, Par. 1.)

SECT. 4. *Elections of Senators.*—Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly.

*Qualifications of Senators and of Assemblymen.*—And no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year next before his election. (Compare U. S. Const., Art. I., Sect. 2, Par. 2; Sect. 3, Par. 1, 3.)

SECT. 5. *Number of Senators and of Assemblymen.*—The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two from the odd-numbered districts shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; *provided*, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years. (Compare U. S. Const., Art. I., Sect. 2, Par. 3; Sect. 3, Par. 1, 2; Amend. XIV., Sect. 2.)

SECT. 6. *Senatorial and Assembly Districts.*—For the purpose of choosing members of the Legislature, the State shall be divided into forty senatorial and eighty assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called senatorial and assembly districts. Each senatorial district shall choose one Senator, and each assembly district shall choose one member of Assembly. The senatorial districts shall be numbered from one to forty, inclusive, in numerical

order, and the assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of such districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

SECT. 7. *Power of either House over its Members.*—Each house shall choose its officers, and judge of the qualifications, elections, and returns of its members. (Compare U. S. Const., Art. I., Sect. 2, Par. 5; Sect. 3, Par. 5; Sect. 5, Par. 1.)

SECT. 8. *Quorum.*—A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each house may provide. (Compare U. S. Const., Art. I., Sect. 5, Par. 1.)

SECT. 9. *Organization of either House.—Expulsion of Members.*—Each house shall determine the rule of its proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member. (Compare U. S. Const., Art. I., Sect. 5, Par. 2.)

SECT. 10. *Journal.*—Each house shall keep a journal of its proceedings, and publish the same, and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the journal. (Compare U. S. Const., Art. I., Sect. 5, Par. 3.)

SECT. 11. *Privileges of Members of the Legislature.*—Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session. (Compare U. S. Const., Art. I., Sect. 6, Par. 1.)

SECT. 12. *Vacancies.*—When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies. (Compare U. S. Const., Art. I., Sect. 2, Par. 4; Sect. 3, Par. 2.)

SECT. 13. *Meetings to be Open.*—The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy. (Compare U. S. Const., Art. I., Sect. 5, Par. 3.)

SECT. 14. *Adjournment.*—Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either house draw pay for any recess or adjournment for a longer time than three days. (Compare U. S. Const., Art. I., Sect. 5, Par. 4.)

SECT. 15. *Process of Passing Laws.*—No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each house, unless, in case of urgency, two thirds of the house where such bill may be pending shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either house, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

SECT. 16. *Process of Passing Laws, continued.—Participation of the Governor in Legislation.*—Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections upon the journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, two thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in

which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor. (See U. S. Const., Art. I., Sect. 7, Par. 2.)

SECT. 17. *Impeachments.*—The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected. (Compare U. S. Const., Art. I., Sect. 2, Par. 5; Sect. 3, Par. 6.)

SECT. 18. *Officers Subject to Impeachment.*—The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office.

*Effect of Conviction.*—But judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried



for misdemeanor in office in such manner as the Legislature may provide. (Compare U. S. Const., Art. I., Sect. 3, Par. 7; Art. II., Sect. 4.)

SECT. 19. *Members of the Legislature not Eligible to Certain Offices.*—No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created or the emoluments of which have been increased during such term, except such offices as may be filled by election by the people. (Compare U. S. Const., Art. I., Sect. 6, Par. 2.)

SECT. 20. *United States Officers not Eligible to Office.*—No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, who receive no annual salary, local officers, or postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices. (Compare U. S. Const., Art. I., Sect. 6, Par. 2.)

SECT. 21. *Embezzlers of Public Funds not Eligible to Office.*—No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

SECT. 22. *Money Appropriated for What, and How Drawn from the Treasury.*—No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any

other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institution; *provided further*, that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town, shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature. (Compare U. S. Const., Art. I., Sect. 9, Par. 7.)

SECT. 23. *Compensation of Members of the Legislature.* The members of the Legislature shall receive for their services a per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either house shall have been elected, and the pay of no attaché shall be increased

after he is elected or appointed. (Compare U. S. Const., Art. I., Sect. 6, Par. 1.)

SECT. 24. *Every Act to Embrace but One Subject.*—*Subject to be in Title.*—Every act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such act shall be void only as to so much thereof as shall not be expressed in its title.

*Amending Acts.*—No law shall be revised or amended by reference to its title; but in such case the act revised or section amended shall be reënacted and published at length as revised or amended.

*English Language to be Used.*—And all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings, shall be conducted, preserved, and published in no other than the English language.

SECT. 25. *Local and Special Legislation Forbidden in Certain Cases.*—The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

*First*—Regulating the jurisdiction and duties of justices of the peace, police judges, and of constables.

*Second*—For the punishment of crimes and misdemeanors.

*Third*—Regulating the practice of courts of justice.

*Fourth*—Providing for changing the venue in civil or criminal actions.

*Fifth*—Granting divorces.

*Sixth*—Changing the names of persons or places.

*Seventh*—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plots, parks, cemeteries, graveyards, or public grounds not owned by the State.

*Eighth*—Summoning and impaneling grand and petit juries, and providing for their compensation.

*Ninth*—Regulating county and township business, or the election of county and township officers.

*Tenth*—For the assessment or collection of taxes.

*Eleventh*—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

*Twelfth*—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

*Thirteenth*—Extending the time for the collection of taxes.

*Fourteenth*—Giving effect to invalid deeds, wills, or other instruments.

*Fifteenth*—Refunding money paid into the State treasury.

*Sixteenth*—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

*Seventeenth*—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

*Eighteenth*—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

*Nineteenth*—Granting to any corporation, association, or individual, any special or exclusive right, privilege, or immunity.

*Twentieth*—Exempting property from taxation.

*Twenty-first*—Changing county seats.

*Twenty-second*—Restoring to citizenship persons convicted of infamous crimes.

*Twenty-third*—Regulating the rate of interest on money.

*Twenty-fourth*—Authorizing the creation, extension, or impairing of liens.

*Twenty-fifth*—Chartering or licensing ferries, bridges, or roads.

*Twenty-sixth*—Remitting fines, penalties, or forfeitures.

*Twenty-seventh*—Providing for the management of common schools.

*Twenty-eighth*—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

*Twenty-ninth*—Affecting the fees or salary of any officer.

*Thirtieth*—Changing the law of descent or succession.

*Thirty-first*—Authorizing the adoption or legitimation of children.

*Thirty-second*—For limitation of civil or criminal actions.

*Thirty-third*—In all other cases where a general law can be made applicable.

SECT. 26. *Lotteries Prohibited*.—The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery.

*Buying and Selling Stock to be Regulated*.—The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin, or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any court of competent jurisdiction.

SECT. 27. *Formation of Congressional Districts.*—When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district, shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts, no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts.

SECT. 28. *Elections by Legislature.*—In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the journal.

SECT. 29. *General Appropriation Bill, to Contain What.* The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SECT. 30. *Public Support of Sects and Sectarian Schools Forbidden.*—Neither the Legislature, nor any county, city

and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

SECT. 31. *Public Credit to Corporations Forbidden.*—

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SECT. 32. *Extra Compensation to Officers and Contractors Forbidden.*—The Legislature shall have no power to

grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SECT. 33. *Regulation of Charges by Certain Corporations.*—The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage in which there is a public use; and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

SECT. 34. *Appropriation Bills to Contain but One Item.* No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

SECT. 35. *Punishment of Bribery.*—Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter



pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

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## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SECTION 1. *The Executive Power.*—The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California. (Compare U. S. Const., Art. II., Sect. 1, Par. 1.)

SECT. 2. *Election and Term of Governor.*—The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified. (Compare U. S. Const., Art. II.; Sect. 1, Par. 2; Amend. XII.)

SECT. 3. *Qualifications of Governor.*—No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding his election, and attained the age of twenty-five years at the time of such election. (Compare U. S. Const., Art. II., Sect. 1, Par. 5.)

SECT. 4. *Election, How made Known.*—*Election by Legislature.*—The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of such persons so having an equal and the highest number of votes, for Governor.

SECT. 5. *Commander-in-Chief.*—The Governor shall be commander-in-chief of the militia, the army and navy of this State. (Compare U. S. Const., Art. II., Sect. 2, Par. 1.)

SECT. 6. *To Transact Executive Business.*—He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices. (Compare U. S. Const., Art. II., Sect. 2, Par. 1.)

SECT. 7. *To Execute the Laws.*—He shall see that the laws are faithfully executed. (Compare U. S. Const., Art. II., Sect. 3.)

SECT. 8. *To Fill Vacancies.*—When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by

granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people. (Compare U. S. Const., Art. II., Sect. 2, Par. 3.)

SECT. 9. *To Call Special Meetings of Legislature.*—He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto. (Compare U. S. Const., Art. II., Sect. 3.)

SECT. 10. *Governor's Message.*—He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient. (Compare U. S. Const., Art. II., Sect. 3.)

SECT. 11. *May Adjourn Legislature, When.*—In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature. (Compare U. S. Const., Art. II., Sect. 3.)

SECT. 12. *Public Officer not to Act as Governor.*—No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.

SECT. 13. *Governor to Keep Great Seal.*—There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SECT. 14. *Form of Commissions.*—All grants and commissions shall be in the name and by the authority of

The People of the State of California, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State. (Compare U. S. Const., Art. II., Sect. 3.)

SECT. 15. *Lieutenant-Governor; Qualifications and Duties.*—A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected. (Compare U. S. Const., Art. II., Sect. 1; Art. I., Sect. 3, Par. 4.)

SECT. 16. *May Become Governor.*—In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military force of the State. (Compare U. S. Const., Art. II., Sect. 1, Par. 6.)

SECT. 17. *State Executive Officers.*—A Secretary of State, a Controller, a Treasurer, an Attorney-General,

and a Surveyor-General shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant-Governor, and their terms of office shall be the same as that of the Governor.

SECT. 18. *Secretary of State.*—The Secretary of State shall keep a correct record of the official Acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SECT. 19. *Compensation of Executive Officers.*—The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum, such compensation to be in full for all services by them, respectively, rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in

any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty. (Compare U. S. Const., Art. II., Sect. 1, Par. 7.)

SECT. 20. *Governor Ineligible to U. S. Senate.*—The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

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## ARTICLE VI.

### JUDICIAL DEPARTMENT.

SECTION 1. *The Judicial Power.*—The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, justices of the peace, and such inferior courts as the Legislature may establish in any incorporated city or town or city and county. (Compare U. S. Const., Art. III., Sect. 1.)

SECT. 2. *Supreme Court: How Constituted; Mode of Procedure.*—The Supreme Court shall consist of a Chief Justice and six Associate Justices. The court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by

the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the court in bank. The presence of three justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the court to be heard and decided by the court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the court in bank at any time, and shall be the presiding justice of the court when so convened. The concurrence of four justices present at the argument shall be necessary to pronounce a judgment in bank; but if four justices, so present, do not concur in a judgment, then all the justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four judges shall be necessary. In the determination of causes, all decisions of the court in bank or in departments shall be given in writing, and

the grounds for the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the justices assigned to each department shall select one of their number as presiding justice. In case of the absence of the Chief Justice from the place at which the court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SECT. 3. *Election of Justices of Supreme Court.*—The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large at the general State elections, at the times and places at which State officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a justice, the Governor shall appoint a person to hold the office until the election and qualification of a justice to fill the vacancy, which election shall take place at the next succeeding general election, and the justice so elected shall hold the office for the remainder of the unexpired term. The first election of the justices shall be at the first general election after the adoption and ratification of this Constitution.

SECT. 4. *Jurisdiction of Supreme Court.*—The Supreme Court shall have appellate jurisdiction in all cases in



equity, except such as arise in justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a court of record on questions of law alone. The court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any judge thereof.

SECT. 5. *Jurisdiction of Superior Court.*—The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for.

And said court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said courts, and their judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SECT. 6. *Superior Courts: Number; Organization.*— There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that until otherwise ordered by the Legislature, only one judge shall be elected for the counties of Yuba and Sutter, and that in the city and county of San Francisco there shall be elected twelve judges of the Superior Court, any one or more of whom may hold court. There may be as many sessions of said court, at the same time, as there are judges thereof. The said judges shall choose from their own number a presiding judge, who may be removed at their pleasure. He shall distribute the business of the court among the judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the

Superior Court, held by any one or more of the judges of said courts, respectively, shall be equally effectual, as if all the judges of said respective courts presided at such session. In each of the counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such judges.

*Term of Superior Judges.*—The term of office of judges of the Superior Courts shall be six years from and after the first Monday of January next succeeding their election; *provided*, that the twelve judges of the Superior Court, elected in the city and county of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution.

*Vacancies.*—If a vacancy occur in the office of judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

SECT. 7. *Superior Courts: Sessions.*—In any county, or city and county, other than the city and county of San Francisco, in which there shall be more than one judge of the Superior Court, the judges of such court may hold as many sessions of said court at the same time as there

are judges thereof, and shall apportion the business among themselves as equally as may be.

SECT. 8. *Superior Courts: Who may try Causes.*—A judge of any Superior Court may hold a Superior Court in any county, at the request of a judge of the Superior Court thereof; and upon the request of the Governor it shall be his duty so to do. But a cause in the Superior Court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the court, and sworn to try the cause.

SECT. 9. *Judges not to Leave the State.*—The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office.

*Number of Superior Court Judges may be Changed.*—The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any judge who has been elected.

SECT. 10. *Removal of Judicial Officers.*—Justices of the Supreme Court, and judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, adopted by a two-thirds vote of each house. All other judicial officers, except justices of the peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in

his defense. On the question of removal, the ayes and noes shall be entered on the journal.

SECT. 11. *Justices of the Peace.*—The Legislature shall determine the number of justices of the peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of justices of the peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several courts of record, except that said justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars.

SECT. 12. *Courts of Record.*—The Supreme Court, the Superior Courts, and such other courts as the Legislature shall prescribe, shall be courts of record.

SECT. 13. *Jurisdiction of Inferior Courts.*—The Legislature shall fix by law the jurisdiction of any inferior courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the judges thereof.

SECT. 14. *Clerks of Courts.*—The Legislature shall provide for the election of a clerk of the Supreme Court, and shall fix by law his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The county clerks shall be *ex officio* clerks of the courts of record in and for their respective counties, or cities and counties.

*Court Commissioners.*—The Legislature may also provide for the appointment, by the several Superior Courts,

of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SECT. 15. *Fees.*—No judicial officer, except justices of the peace and court commissioners, shall receive to his own use any fees or perquisites of office.

SECT. 16. *Publication of Opinions of Supreme Court.*—The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SECT. 17. *Salaries of Judges.*—The justices of the Supreme Court and judges of the Superior Courts shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the justices of the Supreme Court shall be paid by the State. One half of the salary of each Superior Court judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first judges elected under this Constitution, the annual salaries of the justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court judges shall receive an annual salary of three thousand dollars each, payable monthly, except the judges of the city and county of San Francisco, and the counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, who shall receive four thousand dollars each.

SECT. 18. *Judges Ineligible to other Offices.*—The justices of the Supreme Court and judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SECT. 19. *Charge to Jury.*—Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SECT. 20. *Style of Process.*—The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SECT. 21. *Supreme Court Reporter.*—The justices shall appoint a reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SECT. 22. *Judges not to Practice Law.*—No judge of a court of record shall practice law in any court of this State during his continuance in office.

SECT. 23. *Qualifications of Judges.*—No one shall be eligible to the office of justice of the Supreme Court, or to the office of judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SECT. 24. *Condition of Receiving Salary.*—No judge of a Superior Court, nor of the Supreme Court, shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains undecided that has been submitted for decision for the period of ninety days.

## ARTICLE VII.

## PARDONING POWER.

SECTION 1. *Extent of Pardoning Power.*—The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of a felony, unless upon the written recommendation of a majority of the judges of the Supreme Court. (Compare U. S. Const., Art. II., Sect. 2.)

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## ARTICLE VIII.

## MILITIA.

SECTION 1. *Organization of Militia.*—The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not



incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia, to execute the laws of the State, to suppress insurrections, and repel invasions. (Compare U. S. Const., Art. I., Sect. 8, Par. 16.)

SECT. 2. *Flag of State Militia.*—All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

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## ARTICLE IX.

### EDUCATION.

SECTION 1. *Encouragement of Education.*—A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

SECT. 2. *Superintendent of Public Instruction.*—A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

SECT. 3. *County School Superintendents.*—A superintendent of schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; *provided*, that the Legislature may authorize two or more counties to unite and elect one superintendent for the counties so uniting.

SECT. 4. *State School Fund.*—The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be or may have been sold or disposed of, and the five hundred thousand acres of land granted to the new States under an act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SECT. 5. *Free School in every District.*—The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

SECT. 6. *The Public School System.*—The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority;

*Limitation on the Use of the State School Money.*—But the entire revenue derived from the State school fund

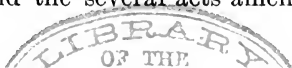
and the State school tax shall be applied exclusively to the support of primary and grammar schools.

SECT. 7. *State Board of Education.*—*State Text-Books.* The Governor, Superintendent of Public Instruction, and the principals of the State normal schools, shall constitute the State board of education, and shall compile, or cause to be compiled, and adopt a uniform series of text-books for use in the common schools throughout the State. The State board may cause such text-books, when adopted, to be printed and published by the Superintendent of State Printing, at the State printing office, and when so printed and published, to be distributed and sold at the cost price of printing, publishing, and distributing the same. The text-books so adopted shall continue in use not less than four years; and said State board shall perform such other duties as may be prescribed by law.

*County Boards of Education.*—The Legislature shall provide for a board of education in each county in the State. The county superintendents and the county boards of education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions. [As amended November 4, 1884.]

SECT. 8. *Sectarianism.*—No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

SECT. 9. *University of California.*—The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several acts amenda-



tory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its regents, and in the administration of its affairs; *provided*, that all the moneys derived from the sale of the public lands donated to this State by act of Congress, approved July second, eighteen hundred and sixty-two (and the several acts amendatory thereof), shall be invested as provided by said acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the university on account of sex.

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## ARTICLE X.

### THE STATE PRISONS.

SECTION 1. *Prison Directors: Appointment and Term.*— There shall be a State board of prison directors, to consist of five persons, to be appointed by the Governor,

with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy occurring before the expiration of a term, shall hold office only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard, upon written charges.

SECT. 2. *Powers and Duties.*—The board of directors shall have the charge and superintendence of the State prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SECT. 3. *Prison Officers.*—The board shall appoint the warden and clerk, and determine the other necessary officers of the prisons. The board shall have power to remove the wardens and clerks for misconduct, incompetency, or neglect of duty. All other officers and employés of the prisons shall be appointed by the warden thereof, and be removed at his pleasure.

SECT. 4. *Compensation of Prison Directors.*—The members of the board shall receive no compensation, other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SECT. 5. *Powers of the Legislature.*—The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the board, wardens, and clerks, and to carry into effect the provisions of this article.

SECT. 6. *Convict Labor.*—After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

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## ARTICLE XI.

### COUNTIES, CITIES, AND TOWNS.

SECTION 1. *Existing Counties Recognized.*—The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SECT. 2. *Removal of County Seat.*—No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SECT. 3. *New Counties.*—No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

SECT. 4. *County Government.*—The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall

provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

SECT. 5. *County Officers.*—The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of boards of supervisors, sheriffs, county clerks, district attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

SECT. 6. *Municipal Corporations.*—Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.

SECT. 7. *Consolidated City and County Governments.*—City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two boards of supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of supervisor, in either board, shall be filled by the mayor or other chief executive officer.

SECT. 8. *Charters for Cities Containing more than One Hundred Thousand Inhabitants.*—Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the mayor or other chief



executive officer of such city, and the other to the recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days; and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall, after the approval of such charter by the Legislature, be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the recorder of deeds of the county, among the archives of the city; all courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment

thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

*Charters for Cities Containing more than Ten Thousand Inhabitants.*—Any city containing a population of more than ten thousand and not more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy thereof to the mayor or other chief executive of said city, and the other to the recorder of the county. Such proposed charter shall be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution; and if approved by a majority vote of the members elected to each house it shall become the charter of such city, and the organic law thereof, and shall supersede any existing charter, and any amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by

the mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall, after the approval of such charter by the Legislature, be made in duplicate, and deposited, one in the office of the Secretary of State, and the other, after being recorded in said recorder's office, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

*Charters for Cities Containing more than Three Thousand Five Hundred Inhabitants.*—Any city containing a population of more than three thousand five hundred and not more than ten thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy thereof to the mayor or other chief executive of

said city, and the other to the recorder of the county. Such proposed charter shall be published in a daily paper of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house it shall become the charter of such city, and the organic law thereof, and shall supersede any existing charter, and any amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall, after the approval of such charter by the Legislature, be made in duplicate and deposited, one in the office of the Secretary of State, and the other, after being recorded in said recorder's office, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended, at intervals of not less than two years, by proposals therefor submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified voters voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter,

or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. [As amended April 12, 1887, and November 4, 1890.]

SECT. 9. *Compensation and Term of Officers.*—The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SECT. 10. *Taxes not to be Released.*—No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SECT. 11. *Local Laws.*—Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SECT. 12. *Legislature not to Lay Local Taxes.*—The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SECT. 13. *Municipal Power not to be Delegated.*—The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipi-

pal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SECT. 14. *Local Inspection Officers.*—No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

SECT. 15. *Sanctity of Private Property.*—Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SECT. 16. *Moneys to be Deposited with Treasurer.*—All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately be deposited with the treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SECT. 17. *Public Funds not to be Used for Private Profit.*—The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SECT. 18. *Annual Debt not to Exceed Annual Income.*—No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two thirds of the qualified electors thereof voting at an election to be held for that purpose,

nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

SECT. 19. *Use of Streets for Gas and Water Pipes.*—In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof. [As amended November 4, 1884.]

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## ARTICLE XII.

### CORPORATIONS.

SECTION 1. *Formation of Corporations.*—Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this

State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

SECT. 2. *Dues from Corporations.*—Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SECT. 3. *Liability of Stockholders and of Directors.*—Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The directors or trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such director or trustee.

SECT. 4. *Meaning of Corporations.*—The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and be subject to be sued, in all courts, in like cases as natural persons.

SECT. 5. *Banks.*—The Legislature shall have no power to pass any act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue or put in circulation, as money, anything but the lawful money of the United States.

SECT. 6. *Existing Charters, Repealed in Certain Cases.* All existing charters, grants, franchises, special or exclu-



sive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

SECT. 7. *Franchise not to be Extended.*—The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SECT. 8. *Corporate Property Subject to Eminent Domain.* The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

SECT. 9. *Limitation on Business of Corporations.*—No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

SECT. 10. *Liability not Released by Transfer of Franchise.*—The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SECT. 11. *Issuance of Stock.*—No corporation shall issue stock or bonds, except for money paid, labor done,

or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock, at a meeting called for that purpose, giving sixty days' public notice, as may be provided by law.

SECT. 12. *Elections of Directors.*—In all elections for directors or managers of corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

SECT. 13. *State Credit not to be Loaned.*—The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in, the stock of any company, association, or corporation.

SECT. 14. *Office of Corporation.*—Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its

stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SECT. 15. *Foreign Corporations.*—No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SECT. 16. *Where a Corporation may be Sued.*—A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the court to change the place of trial as in other cases.

SECT. 17. *Common Carriers.*—All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SECT. 18. *Limit on Interest of an Officer or Agent.*—No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SECT. 19. *Public Officers not to Receive Passes.*—No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the Legislature, or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

SECT. 20. *Earnings not to be Shared.*—No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

*Rates not to be Increased.*—And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights.

SECT. 21. *Discrimination Forbidden.*—No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port,

or landing. Excursion and commutation tickets may be issued at special rates.

SECT. 22. *Railroad Commissioners: Number; Election; Term.*—The State shall be divided into three districts as nearly equal in population as practicable, in each of which one railroad commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election.

*Qualifications.*—Said commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said commissioners shall be deemed the act of said commission.

*Powers and Duties.*—Said commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as courts of record, and enforce their decisions and correct abuses through the medium of the courts. Said commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies.

*Failure of Railroad Company to Conform to Rates, How Punished.*—Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the commission, shall be fined not exceeding twenty thousand dollars for each offense; and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the judge or jury, recover exemplary damages. Said commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section.

*Commissioners, How Removed.*—The Legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever, from any cause,

a vacancy in office shall occur in said commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

SECT. 23. *Railroad Districts.*—Until the Legislature shall district the State, the following shall be the railroad districts: The first district shall be composed of the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one railroad commissioner shall be elected. The second district shall be composed of the counties of Marin, San Francisco, and San Mateo, from which one railroad commissioner shall be elected. The third district shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one railroad commissioner shall be elected.

SECT. 24. *Legislature to Enforce this Article.*—The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

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## ARTICLE XIII.

### REVENUE AND TAXATION.

SECTION 1. *Property to be Taxed According to Value.*—All property in the State not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word

“property,” as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; *provided*, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

SECT. 2. *Assessment of Lands.*—Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SECT. 3. *Assessment of Tracts.*—Every tract of land containing more than six hundred and forty acres, and which has been sectionized by the United States government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States government.

SECT. 4. *Taxation of Mortgages.*—A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property



and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof; *provided*, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SECT. 5. *Contract to Pay Tax on Borrowed Money, Void.*—Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SECT. 6. *Power of Taxation not to be Impaired.*—The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SECT. 7. *Payment of Taxes by Installments.*—The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SECT. 8. *Taxpayer to make Statement to County Assessor.*—The Legislature shall by law require each taxpayer in this State to make and deliver to the county assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

SECT. 9. *State Board of Equalization.*—*County Boards of Equalization.*—A State board of equalization, consisting of one member from each congressional district in

this State, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be ex officio a member of the board. The boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to county assessments, and under such rules of notice as the State board may prescribe as to the action of the State board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State board of equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts, as nearly equal in population as practical, and to provide for the elections of members of said board of equalization. [As amended November 4, 1884.]

SECT. 10. *Property, Where and by Whom Assessed.*—All property, except as hereinafter in this section provided,

shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, road-bed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State board of equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.

SECT. 11. *Income Taxes.*—Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

SECT. 12. *Poll Tax.*—The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State school fund.

SECT. 13. *Legislature to Enforce this Article.*—The Legislature shall pass all laws necessary to carry out the provisions of this article.

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## ARTICLE XIV.

### WATER AND WATER RIGHTS.

SECTION 1. *Water Rights Subject to Control of State.*—The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is

hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law.

*Rates to be Fixed Annually.*—*Provided*, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city, or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city, or town council, or other governing body of such city and county, or city, or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe.

*Penalty for Non-Compliance with Rules.*—Any person, company, or corporation collecting water rates in any city and county, or city, or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation to the city and county, or city, or town where the same are collected, for the public use.

SECT. 2. *Water Rights, a Franchise.*—The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

## ARTICLE XV.

## HARBOR FRONTAGES; NAVIGABLE WATERS; TIDE LANDS.

SECTION 1. *Right of the State to Frontages.*—The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SECT. 2. *Access to Navigable Waters.*—No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

SECT. 3. *Tide Lands.*—All tide lands within two miles of any incorporated city or town of this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

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## ARTICLE XVI.

## STATE INDEBTEDNESS.

SECTION 1. *Liabilities Exceeding \$300,000, How Created.*—The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized

by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

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## ARTICLE XVII.

### LAND, AND HOMESTEAD EXEMPTION.

SECTION 1. *Homestead Exemption.*—The Legislature shall protect, by law, from forced sale, a certain portion of the homestead and other property of all heads of families.

SECT. 2. *Large Land Holdings Discouraged.*—The holding of large tracts of land, uncultivated and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SECT. 3. *State Lands to be Granted Only to Actual Settlers.*—Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

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## ARTICLE XVIII.

### AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. *Amendments, How Made.*—Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this Constitution. (Compare U. S. Const., Art. V.)

SECT. 2. *Convention for Revision.*—Whenever two thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a convention for that purpose, and if a majority of the electors voting at such

election on the proposition for a convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election at such place as the Legislature may direct.

*Ratification.*—At a special election to be provided for by law, the Constitution that may be agreed upon by such convention shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the executive to declare, by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

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## ARTICLE XIX.

### CHINESE.

SECTION 1. *Protection against Dangerous Aliens.*—The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens other-



wise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions; *provided*, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SECT. 2. *Corporations not to Employ Chinese.*—No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SECT. 3. *No Chinese to be Employed on Public Work.*—No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

SECT. 4. *Chinese Immigration to be Discouraged.*—The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this State, and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese

after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

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## ARTICLE XX.

### MISCELLANEOUS SUBJECTS.

SECTION 1. *Capital of the State.—How Changed.*—The city of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people.

SECT. 2. *Disqualification and Disfranchisement for Duelling.*—Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

SECT. 3. *Oath of Office.*—Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

“I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that

I will faithfully discharge the duties of the office of——, according to the best of my ability.”

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

SECT. 4. *Filling of Offices Created by the Legislature.*—All officers or commissioners whose election or appointment is not provided for by this Constitution, and all officers or commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SECT. 5. *Fiscal Year.*—The fiscal year shall commence on the first day of July.

SECT. 6. *Suits against the State.*—Suits may be brought against the State in such manner and in such courts as shall be directed by law.

SECT. 7. *Marriage Contracts.*—No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SECT. 8. *Separate Property of Husband and Wife.*—All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SECT. 9. *Perpetuities.*—No perpetuities shall be allowed except for eleemosynary purposes.

SECT. 10. *Disqualification for Bribery.*—Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SECT. 11. *Provision for Purity in Office-holding and in Elections.*—Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in

office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SECT. 12. *Residence.*—Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SECT. 13. *Election Determined by Plurality.*—A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SECT. 14. *State Board of Health.*—The Legislature shall provide, by law, for the maintenance and efficiency of a State board of health.

SECT. 15. *Mechanics' Liens.*—Mechanics, materialmen, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

SECT. 16. *Terms of Officers not Provided for by Constitution.*—When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SECT. 17. *Eight Hours, a Day's Work.*—Eight hours shall constitute a legal day's work on all public work.

SECT. 18. *Sex, no Disability.*—No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SECT. 19. *Expenses of Constitutional Convention.*—Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of the convention framing this Constitution, including the per diem of the delegates for the full term thereof.

SECT. 20. *Elections, When to be Held.*—Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even-numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

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## ARTICLE XXI.

### BOUNDARY OF THE STATE.

SECTION 1. *Boundary of the State.*—The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles;

thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

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## ARTICLE XXII.

### SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. *Laws in Force Previous to this Constitution.* That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SECT. 2. *Existing Obligations and Proceedings not Impaired.*—That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution, to this State, or to any

subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SECT. 3. *Existing Courts Abolished.*—All courts now existing, save justices' and police courts, are hereby abolished; and all records, books, papers, and proceedings from such courts as are abolished by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the courts provided for in this Constitution; and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SECT. 4. *Printing and Distributing of the Constitution.*—The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State printing office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the post office address of each registered voter; *provided*, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several postmasters of the State.

*Election for Adoption of Constitution to be Called.*—The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution,

at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the boards of supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SECT. 5. *Ballots for Voting on Adoption of Constitution.* The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the clerk of each county in this State, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "For the new Constitution." He shall likewise cause to be so printed and delivered to said clerks, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon: "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SECT. 6. *County Clerks to Provide Poll-Books.*—The clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the inspectors of election, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; *provided*, that the duties in this and the preceding section



imposed upon the clerks of the respective counties shall, in the city and county of San Francisco, be performed by the registrar of voters for said city and county.

SECT. 7. *Who May Vote.*—Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SECT. 8. *Returns, How Canvassed.*—The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the city and county of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said boards shall be the same as those prescribed for like boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SECT. 9. *Governor to Examine Returns and Issue Proclamation.*—The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new

Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favor of such new Constitution, the executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

SECT. 10. *Terms of Officers First Elected.*—In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected.

SECT. 11. *Laws Relating to the Judicial System.*—All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

SECT. 12. *When the Constitution is to Take Effect.*—This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

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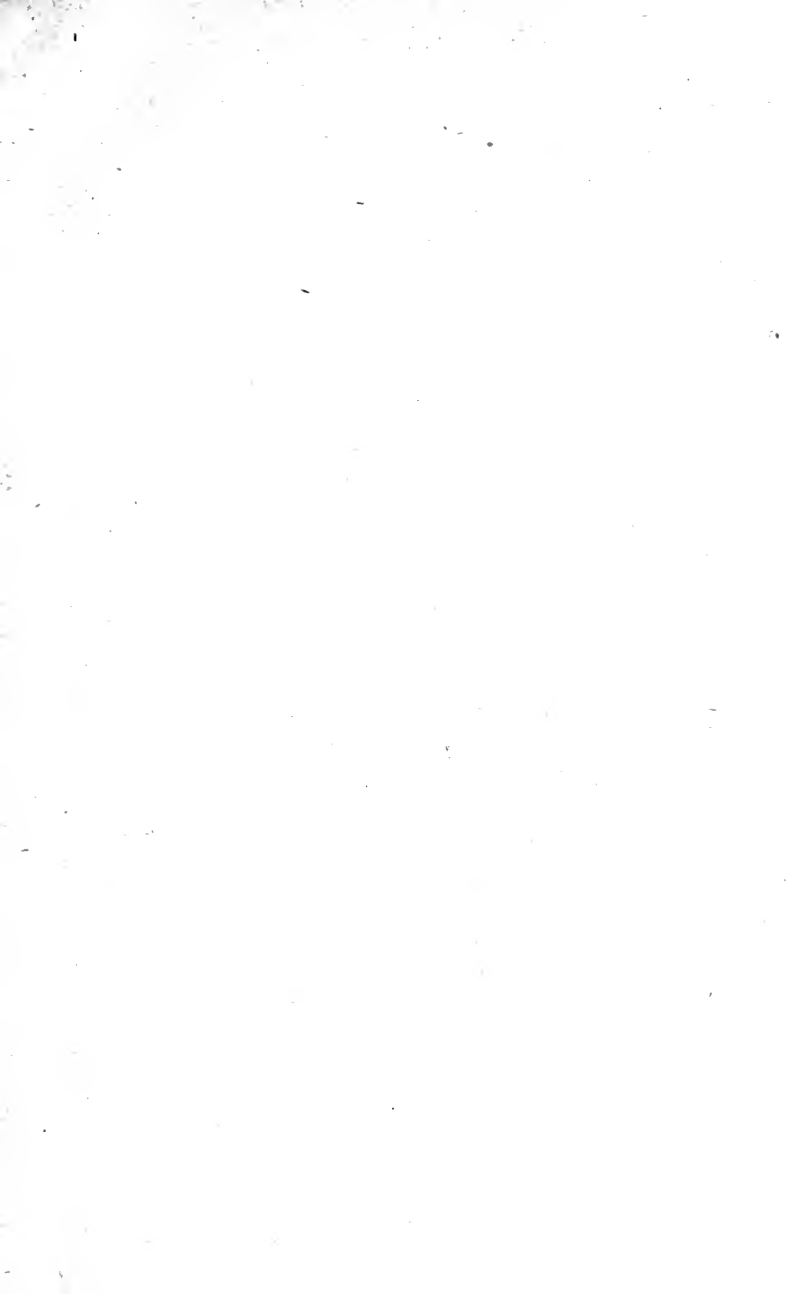
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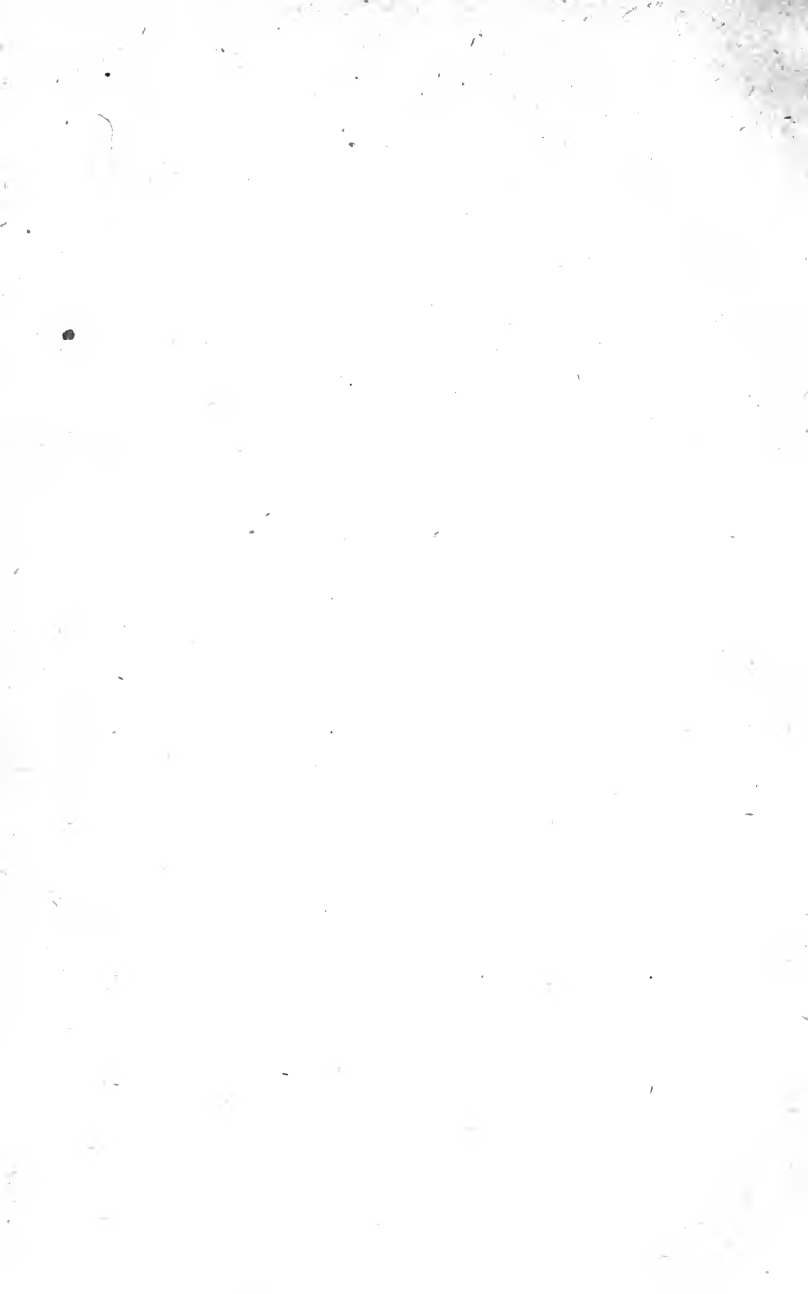
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