CONSTITUTION OF THE UNITED STATES

1787[1]

NOT WE THE PEOPLE OF THE UNITED STATES OF AMERICA

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

TITLE 26

TITLE 48

ARTICLE I

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

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several

1 In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz.: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them, and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so

Historical Note

This amendment was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

ARTICLE [XIII]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Historical Note

This amendment was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

ARTICLE [XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other 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.

Section 3. 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.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Historical Note

This amendment was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866, (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterward ratified by either State.

VII. EFFECT OF EXCEPTIONS

VIII. CONTEMPORANEOUS AND SUBSEQUENT PRACTICAL CONSTRUCTION

1. Ambiguity or Doubt.
2. Stare Decisis.
3. Administrative Interpretation.
4. Contemporary Legislation.
5. The Federalist.

I. HISTORICAL BACKGROUND

1. Origin; Conditions and Circumstances of Period

The historical origin may be considered, and historical evidence may be resorted to, for aid in the construction and application of words and provisions of the Federal Constitution.[1] What went before its adoption may be resorted to for the purpose of throwing light on its provisions.[2]

In placing a construction upon an article of doubtful meaning, the safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then to construe it in a way, so far as is reasonably possible, to forward the known purpose or object for which it was adopted.[3]

1. Twining v. New Jersey, N.J.1908, 29 S.Ct. 14, 211 U.S. 78, 53 L.Ed. 97; Williamson v. U. S., Or.1907, 28 S.Ct. 163, 207 U.S. 425, 52 L.Ed. 278; Appleyard v. Massachusetts, Mass.1906, 27 S.Ct. 122, 203 U.S. 222, 51 L.Ed. 161, 7 Ann.Cas. 1073; Missouri v. Illinois, 1901, 21 S.Ct. 331, 180 U.S. 219, 45 L.Ed. 497; Veazie Bank v. Fenno, Me.1869, 75 U.S. 542, 8 Wall. 542, 19 L.Ed. 482; Weeks v. U. S., C.C.A.N.Y. 1914, 216 F. 292, certiorari denied 35 S.Ct. 199, 235 U.S. 697, 59 L.Ed. 431.

"The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution, in order thereby to be enabled to correctly interpret its meaning." Knowlton v. Moore, N.Y.1900, 20 S.Ct. 747, 178 U.S. 95, 44 L.Ed. 969.

2. Marshall v. Gordon, N.Y.1917, 37 S. Ct. 448, 243 U.S. 521, 61 L.Ed. 881.

3. South Carolina v. U. S., 1905, 26 S. Ct. 110, 199 U.S. 457, 50 L.Ed. 261, 4 Ann. Cas. 737; Maxwell v. Dow, Utah 1900, 20 S.Ct. 448, 176 U.S. 601, 44 L.Ed. 597; Legal Tender Cases, Tex.1870, 79 U.S. 560, 12 Wall. 560, 20 L.Ed. 287; Prigg v. Pennsylvania, Pa.1842, 41 U.S, 539, 16 Pet. 539, 10 L.Ed. 1060; Rhode Island v. Massachusetts, R.I.1838, 37 U.S. 723, 12 Pet. 723, 9 L.Ed. 1233; Kendall v. U. S., Dist.Col.1838, 37 U.S. 524, 12 Pet. 524, 9 L.Ed. 1181; Adams v. Storey, C.C.N.Y. 1817, 1 Paine (U.S.) 79, 1 Fed.Cas.No. 66; State v. Gibson, 1871, 36 Inc. 391; Campbell v. Morris, 1797, 3 Har. & M. (Md.) 552.

"Before coming, however, to the text of the [16th] Amendment, to the end that its significance may be determined in the light of the previous legislative judicial history of the subject with which the Amendment is concerned and with a knowledge of the conditions which presumptively led up to its adoption and hence of the purpose it was intended to accomplish, we make a brief statement on those subjects." Brushaber v. Union Pac. R. Co., N.Y.1916, 36 S.Ct. 236, 240 U. S. 1, 60 L.Ed. 493, Ann.Cas.1917B, 713, L. R.A.1917D, 414.

2. Debates in Convention and Congress

The views of particular members or the course of proceedings in the Convention cannot control the fair meaning and general scope of the Constitution as it was finally framed.[4] What individual Senators or Representatives may have urged in debate in regard to the meaning to be given to a proposed amendment does not furnish a firm ground for its construction, nor is it important as explanatory of the grounds upon which the members voted in adopting it.[5] It has been held, however, that the court may consider what was said by those who took part in enacting a constitutional provision, in determining the intent thereof.[6]

II. PRINCIPLES OF COMMON LAW

The interpretation of the Constitution is necessarily influenced by the fact that its provisions are framed in the language of the common law, and are to be read in the light of its history.[7] The

4. Legal Tencer Cases, Pa.1870, 79 U.S. 560, 12 Wall. 560, 28 L.Ed. 286; The Huntress, D.C.Me.1840, 2 Ware (U.S.) 89, 12 Fed.Cas.No.6,914.

"As an illustration of the danger of giving too much weight, upon such a question, to the debates and the votes in the convention, it may also be observed that propositions to authorize Congress to grant charters of incorporation for national objects were strongly opposed, especially as regards banks, and defeated. [5 Elliott's Debates] 440, 543, 544. The power of Congress to emit bills of credit, as well as to incorporate national banks, is now clearly established." Legal Tender Case, N.Y.1884, 4 S.Ct. 122, 110 U.S. 444, 28 L.Ed. 204.

5. "In the case of a constitutional amendment it is of less materiality than in that of an ordinary bill or resolution. A constitutional amendment must be agreed to, not only by Senators and Representatives, but it must be ratified by the legislatures, or by conventions in three-fourths of the states before such amendment can take effect. The safe way is to read its language in connection with the known condition of affairs out of which the occasion for its adoption may have arisen, and then to construe it, if there be therein any doubtful expressions, in a way so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted. This rule could not, of course, be so used as to limit the force and effect of an amendment in a manner which the plain and unambiguous language used therein would not justify or permit." Maxwell v. Dow, Utah 1900, 20 S.Ct. 448, 176 U.S. 601, 44 L.Ed. 597.

"Doubtless the intention of the Congress which framed and of the states which adopted this amendment of the Constitution [the Fourteenth Amendment] must be sought in the words of the amendment; and the debates in Congress are not admissible as evidence to control the meaning of those words. But the statements above quoted [from debates in Congress] are valuable as contemporaneous opinions of jurists and statesmen upon the legal meaning of the words themselves; and are, at the least, interesting as showing that the application of the amendment to the Chinese race was considered and not overlooked." U. S. v. Wong Kim Ark, Cal.1898, 18 S.Ct. 456, 169 U.S. 699, 42 L.Ed. 890.

"It is unnecessary to enter into the details of this debate. The arguments of individual legislators are no proper subject for judicial comment. They are so often influenced by personal or political considerations, or by the assumed necessities of the situation, that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts." Downes v. Bidwell, N.Y.1901, 21 S.Ct. 770, 182 U.S. 254, 45 L.Ed. 1088.

6. U. S. v. Cornell, D.C.Idaho 1940, 36 F.Supp. 81.

7. Ex parte Grossman, 1925, 45 S.Ct. 332, 267 U.S. 87, 69 L.Ed. 527, 38 A.L.R. 131; South Carolina v. U. S., 1905, 26 S.

range of a constitutional provision phrased in terms of the common law may sometimes be fixed by recourse to the common law,

Ct. 110, 199 U.S. 449, 50 L.Ed. 261, 4 Ann. Cas. 737; Schick v. U. S., Ill.1904, 24 S. Ct. 826, 195 U.S. 68, 49 L.Ed. 99, 1 Ann. Cas. 585; U. S. v. Wong Kim Ark, Cal. 1898, 18 S.Ct. 456, 169 U.S. 654, 457, 42 L. Ed. 890; U. S. v. Sanges, Ga.1892, 12 S. Ct. 609, 144 U.S. 310, 36 L.Ed. 445; Smith v. Alabama, Ala.1888, 8 S.Ct. 564, 124 U.S. 478, 31 L.Ed. 508; Dickinson v. U. S. C. C.A.Mass.1908, 159 F. 801, certiorari dismissed 29 S.Ct. 485, 213 U.S. 92, 53 L.Ed. 711.

Existence and Authority of the Common Law. When the Constitution was adopted the general rules of the common law, in so far as they were applicable to the conditions then existing in the colonies, and subject to the modifications necessary to adapt them to the uses and needs of the people, were recognized and were in force in the colonies, and the people thereof were entitled to demand the enforcement thereof through the judicial tribunals then existing. The adoption of the Constitution did not deprive the people of the several colonies of the protection and advantages of the common law. The Constitution itself recognizes the fact of the continued existence of the common law, and indeed it is based upon the principles thereof, and its correct interpretation requires that its provisions shall be read and construed in the light thereof. Murray v. Chicago, etc., R. Co., C.C.Iowa 1894, 62 F. 24, 27, affirmed 92 F. 868.

"The Constitution of the United States, like those of all the original states (and in fact of all the states now forming the Union, with the exception of Louisiana) presupposed the existence and authority of the common law. The principles of that law were the basis of our institutions. In adopting the state and national constitutions, those fundamental laws which were to govern their political action and relations in the new circumstances arising from the assumption of sovereignty, both local and national, our ancestors rejected so much of the common law as was then inapplicable to their situation, and prescribed new rules for their regulation and government. But in so doing they did not reject the body of the common law. They founded their respective state constitutions and the great national compact upon its existing principles, so far as they were consistent and harmonious with the provisions of those constitutions. A brief reference to the Constitution of the United States will illustrate this idea. It gives the sole power of impeachment to the House of Representatives, and the sole power of trying an impeachment to the Senate. Impeachment is thus treated as a well-known, defined, and established proceeding. Yet it was only known to the common law, and could be understood only by reference to the principles of that law. The Congress was authorized to provide for the punishment of felonies committed on the high seas, and for punishing certain other crimes. The common law furnished the only definition of felonies. The trial of all crimes, except in cases of impeachment, was to be by jury; and the Constitution speaks of treason, bribery, indictment, cases in equity, an uniform system of bankruptcy, attainder, and the writ of habeas corpus; all of which were unknown, even by name, to any other system of jurisprudence than the common law. In like manner, the amendments to the Constitution make provisions in reference to the right of petition, search warrants, capital crimes, grand jury, trial by jury, bail, fines, and the rules of the common law. In these instances, no legislative definition or exposition was apparently deemed necessary by the framers of the Constitution. They are spoken of as substantial things, already existing and established, and which will continue to exist." Lynch v. Clarke, 1844, 1 Sandf. Ch. (N.Y.) 583, 652.

Blackstone's Commentaries are accepted as the most satisfactory exposition of the common law of England. At the time of the adoption of the Federal Constitution they had been published about twenty years, and it has been said that more copies of the work had been sold in this country than in England, so that undoubtedly the framers of the Constitution were familiar with it. Schick v. U. S., Ill.1904, 24 S.Ct. 826, 195 U.S. 68, 49 L. Ed. 199, 1 Ann.Cas. 585.

"I have cited Blackstone's Commentaries because that work was contemporaneous with our Constitution, and brought the law of England down to that day, and then, as now, was the authoritative text-book on its subject, familiar not only to the profession, but to all men of the general education of the founders of our Constitution. Mr. Burke, in his speech 'On Conciliation with America,' delivered in March, 1775, referring to information derived from 'an eminent bookseller,' as to the great exportation of law books to this country, says: 'The colonists have now fallen into the way

but the doctrine justifying such recourse must yield to more compelling reasons and is subject to the qualification that the common-law rule invoked shall not have been rejected by our ancestors as unsuited to their civil or political conditions.[8]

The adoption of the words and terms, such as, pardon, impeachment, trial by jury, felony, ex post facto, bill of attainder, habeas corpus, unreasonable searches and seizures, presentment, indictment, infamous crime, right to be informed of the nature of the accusation, and twice put in jeopardy, is a recognition of the maxims and essential principles of the common law, and resort may and should be had thereto to ascertain their true meaning.[9] But in holding that an indictment or presentment is not essential to "due

of printing them for themselves. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England.' That book, therefore, thus belongs to the precise time to which our question relates, and is especially authoritative on its subject. and therefore I shall continue to cite it." Knote's Case, 1874, 10 Ct.Cl. 397, affirmed 95 U.S. 149, 5 Otto. 149, 24 L.Ed. 442.

8. Grosjean v. American Press Co., 1936, 56 S.Ct. 444, 297 U.S. 233, 80 L.Ed. 660.

9. Callan v. Wilson, Dist.Col.1888, 8 S. Ct. 1301, 127 U.S. 549, 32 L.Ed. 223; Ex parte Bain, 1887, 7 S.Ct. 781, 121 U.S. 12, 30 L.Ed. 849; Locke v. New Orleans, La. 1866, 71 U.S. 172, 4 Wall. 172, 18 L.Ed. 334; Low v. U. S., C.C.A.Ohio 1909, 169 F. 86; West v. Gammon, C.C.Tenn.1899, 98 F. 426, 427; U. S. v. Potter, C.C.Mass., 56 F. 83, reargued in part 56 F. 97, reversed on other grounds 15 S.Ct. 144, 155 U.S. 438, 39 L.Ed. 214; U. S. v. Three Copper Stills, etc., D.C.Ky.1890, 47 F. 495; U. S. v. Ayres, D.C.S.D.1891, 46 F. 651; U. S. v. Harris, D.C.Ky.1866, 1 Abb. (U. S.) 110, 26 Fed.Cas.No.15,312; U. S. v. Gilbert, C. C.Mass.1834, 2 Sumn. (U.S.) 19, 25 Fed. Cas.No.15,204; U. S. v. Block, D.C.Or.1877, 4 Sawy. (U. S.) 211, 24 Fed.Cas.No.14,609; Pardoning Power of President, 1852, 5 Op.Atty.Gen. 532, 535; Hopkins v. U. S., 1894, 4 App.D.C. 430, 436.

"As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it." But as to the extent of the power, the attorney-general said in Pardoning Power of President (1863) 10 Op.Atty. Gen. 452, 454: "The powers of the President, in this respect, cannot be enlarged by analogy to the powers of an English king, because the powers of the two have their origin and mode of existence in different and opposite principles. (See Bl. Com., Book 4, c. 31.) 'His (the king's) power of pardoning was said by our Saxon ancestors to be derived a lege suoe dignitatis; and it is declared in Parliament, by Stat. 27, Hen. 8, that no other person hath power to pardon or remit any treason or felonies whatsoever; but that the king hath the whole and sole power thereof, united and knit to the imperial crown of this realm.' And hence in a former opinion (of July 5, 1861), speaking of the pardoning power and some others of that nature, I said: 'These belong to that class which in England, are called "prerogative powers," inherent in the crown. And yet the framers of our Constitution thought proper to preserve them, and to vest them in the President, as necessary to the good government of the country.' As far as they are so preserved and vested they are legitimate powers in the hands of the President. But they are not prerogatives—they are legal powers vested in, and duties imposed upon the President by the letter of the Constitution; and they are to be exercised and judged of as other granted powers and imposed duties are. The power to grant reprieves and pardons is given, in terms, to the President; but the power to remit forfeitures, fines, and penalties (as distinct from the pardon of crimes) is not given. Yet the king had both powers. And necessarily so, in the theory of the English government, in which the king is the only person offended by the commission of crimes, and the only owner of things forfeited, unless expressly provided otherwise by statute." U. S. v. Wilson, Pa. 1833, 32 U.S. 150, 7 Pet. 150, 8 L.Ed. 640.

process of law," under the Fourteenth Amendment, when applied to prosecutions for felonies in state courts, it has been said: "In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Charta were incorporated into Bills of Rights. They were limitations upon all the powers of government, legislative as well as executive and judicial. It necessarily happened, therefore, that as these broad and general maxims of liberty and justice held in our system a different place and performed a different function from their position and office in English constitutional history and law, they would receive and justify a corresponding and more comprehensive interpretation. Applied in England only as guards against executive usurpation and tyranny, here they have become bulwarks also against arbitrary legislation; but in that application, as it would be incongruous to measure and restrict them by the ancient customary English law, they must be held to guarantee not particular forms of procedure, but the very substance of individual rights to life, liberty, and property. Restraints that could be fastened upon executive authority with precision and detail might prove obstructive and injurious when imposed on the just and necessary discretion of legislative power; and while in every instance laws that violated express and specific injunctions and prohibitions might, without embarrassment, be judicially declared to be void, yet any general principle or maxim founded on the essential nature of law as a just and reasonable expression of the public will and of government, as instituted by popular consent and for the general good, can only be applied to cases coming clearly within the scope of its spirit and purpose, and not to legislative provisions merely establishing forms and modes of attainment." [10]

Whether a clause of the Constitution is restricted by rules of English law, as they existed when Constitution was adopted, depends upon the terms or nature of the particular clause.[11]

III. PRINCIPLES OF EXISTING LAW

The scope and effect of many of the provisions of the Constitution are best ascertained by bearing in mind what the law was at the time the Constitution and amendments thereof were adopted and ratified,[12] not as reaching out for new guaranties but as secur-

10. Hurtado v. California, Cal.1884, 4 S.Ct. 111, 292, 110 U.S. 531, 28 L.Ed. 232.

11. U. S. v. Wood, 1937, 57 S.Ct. 177, 299 U.S. 123, 81 L.Ed. 78, rehearing denied 57 S.Ct. 319, 299 U.S. 624, 81 L.Ed. 459; Continental Illinois Nat. Bank & Trust Co. of Chicago v. Chicago, R. I. & P. Ry. Co., 1935, 55 S.Ct. 595, 294 U.S. 648, 79 L.Ed. 1110.

12. Ex parte Wilson, 1885, 5 S.Ct. 935, 114 U.S. 422, 29 L.Ed. 89; Turner v. Mary-

ing such as the law then recognized.[13] The requirement of full faith and credit is to be read and interpreted in the light of well-established principles of justice protected by other constitutional provisions which it was never intended to modify or override.[14] The provision that an accused person shall "be confronted with the witnesses against him" is not infringed by permitting the testimony of witnesses sworn upon a former trial, since deceased, to be read against him. The substance of the constitutional protection is preserved to the prisoner in the advantage he has once had of seeing the witness face to face, and of subjecting him to the ordeal of a cross-examination. The admission of dying declaration is also an exception to this rule. These exceptions were well established before the adoption of the Constitution and were not intended to be abrogated.[15] Article I, section 10, provides that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, and what were inspection laws was well understood at the time the Constitution was adopted.[16]

land, Md.1882, 2 S.Ct. 44, 107 U.S. 52, 27 L.Ed. 370.

An amendment should be construed in the light of conditions existing at the time of its adoption. The Fourteenth Amendment to the Constitution of the United States was not adopted until after several states of the Union had made provision for prosecuting public offenses by information, and practically dispensing with the grand jury system, and after the validity of such constitutional and statutory provisions had been affirmed by decisions of the courts of the respective states in which they were adopted. If an indictment or presentment of a grand jury is essential to "due process of law," within the meaning of that phrase as used in the Fourteenth Amendment, then all of the states, including those above referred to which had theretofore enacted laws providing for prosecutions by information, are alike prohibited from proceeding in that manner against persons charged with violations of state law; and yet, in the twenty-five years since the adoption of this amendment, it has not been adjudged in a single case by any court that it has annulled or abrogated the laws, providing for that mode of proceeding. In re Humason, D.C. Wash.1891, 46 F. 388.

13. Mattox v. U. S., Kan.1895, 15 S.Ct. 337, 156 U.S. 243, 39 L.Ed. 409.

Accused shall have speedy trial. Construing the clause of the Sixth Amendment that the accused shall have a speedy trial by jury, the court said: "The only exceptions are crimes and accusations of that class, which, at the time of the adoption of the Constitution, were, by the regular course of the law and the established modes of procedure, not the subjects of jury trial. These are found to have been those offenses against police regulations for the protection of society against the vicious, idle, vagrant, and disorderly portion of its members. Such offenses of necessity must be speedily and summarily disposed of, as well for the relief of the offender as of the community." In re Cross, D.C.Md.1884, 20 F. 824, 825.

14. Elgelow v. Old Dominion Copper Min., etc., Co., Mass.1912, 32 S.Ct. 641, 225 U.S. 111, 56 L.Ed. 1009, Ann.Cas.1913E, 875; Darling & Company v. Burchard, 1939, 284 N.W. 856, 69 N.D. 212.

15. Kirby v. U. S., S.D.1899, 19 S.Ct. 574, 174 U.S. 47, 43 L.Ed. 890; Mattox v. U. S., Kan.1895, 15 S.Ct. 337, 156 U.S. 243, 39 L.Ed. 409.

16. New York v. Compagnie Generale Transatlantique, C.C.N.Y.1882, 10 F. 357, 361, affirmed 2 S.Ct. 87, 107 U.S. 59, 27 L.Ed. 383.

criminal case to be a witness against himself should be construed, as it was doubtless designed, to effect a practical and beneficent purpose—not necessarily to protect witnesses against every possible detriment which might happen to them from their testimony, nor to unduly impede, hinder, or obstruct the administration of criminal justice.[58] The limitations and ample provisions of the Constitution should not be extended so far as to destroy the necessary powers of the states or prevent their efficient exercise.[59] In construing the Fourteenth Amendment, and holding that a Texas statute directed solely against railroad companies for permitting Johnson grass or Russian thistle to go to seed upon their right of way was not a clear violation of the equal protection clause, Holmes, J., said: "Great Constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." [60]

VI. CONSTRUCTION OF WORDS AND PHRASES

1. Common and Ordinary Meaning

No word or clause can be rejected as superfluous or unmeaning, but each must be given its due force and appropriate meaning.[61]

By a literal contruction of the Constitution, any number of negroes may be brought from Massachusetts into Pennsylvania, and control the elections of the latter state; but this is one of the privileges which have never yet been claimed for the African race. In all of these cases a literal construction would be less absurd than a similar construction of the laws under consideration." Compensation of Laborers in Executive Departments, 1857, 9 Op.Atty.Gen. 117, 120.

58. Compelling a person to be a witness against himself. "The clause of the Constitution in question is obviously susceptible of two interpretations. If it be construed literally, as authorizing the witness to refuse to disclose any fact which might tend to incriminate, disgrace, or expose him to unfavorable comments, then as he must necessarily to a large extent determine upon his own conscience and responsibility whether his answer to the proposed question will have that tendency, the practical result would be that no one could be compelled to testify to a material fact in a criminal case, unless he chose to do so, or unless it was entirely clear that the privilege was not set up in good faith. If, upon the other hand, the object of the provision be to secure the witness against a criminal prosecution, which might be aided directly or indirectly by his disclosure, then, if no such prosecution be possible—in other words, if his testimony operate as a complete pardon for the offense to which it relates—a statute absolutely securing to him such immunity from prosecution would satisfy the demands of the clause in question." Brown v. Walker, Pa.1896, 16 S.Ct. 644, 161 U.S. 591, 40 L.Ed. 819.

59. Union Pac. R. Co. v. Peniston, Neb.1873, 85 U.S. 31, 18 Wall. 31, 21 L.Ed. 787.

60. Missouri, etc., R. Co. v. May, Tex. 1904, 24 S.Ct. 638, 194 U.S. 270, 48 L.Ed. 971.

61. Wright v. U. S., 1938, 58 S.Ct. 395, 302 U.S. 583, 82 L.Ed. 439; Knowlton v. Moore, N.Y.1900, 20 S.Ct. 747, 178 U.S. 87, 44 L.Ed. 969.

The plain, obvious meaning of the words must control. Jacobson v. Massachusetts, Mass.1905, 25 S.Ct. 358, 197 U.S. 22, 49 L.Ed. 643, 3 Ann.Cas. 765.

"Agreement" and "compact."—"When therefore, the second clause declares that no state shall enter into 'any agreement or compact' with a foreign power without the assent of Congress, the words 'agreement' and 'compact' cannot be construed as synonymous with one an-

Words in a constitution, as well as words in a statute, are always to be given the meaning they have in common use unless there are other strong reasons to the contrary.[62] They are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged.[63] Words and terms are to be taken in the

other; but still less can either of them be held to mean the same thing with the word 'treaty' in the preceding clause, into which the states are positively and unconditionally forbidden to enter; and which even the consent of Congress could not authorize." Holmes v. Jennison, Vt. 1840, 39 U.S. 571, 14 Pet. 571, 10 L.Ed. 579. See, also, Virginia v. Tennessee, 1893, 13 S.Ct. 728, 148 U.S. 519, 37 L.Ed. 537.

Due process of law. "According to a recognized canon of interpretation, especially applicable to formal and solemn instruments of constitutional law, we are forbidden to assume, without clear reason to the contrary, that any part of this most important amendment is superfluous. The natural and obvious inference is, that in the sense of the Constitution, 'due process of law' was not meant or intended to include, ex vi termini, the institution and procedure of a grand jury in any case. The conclusion is equally irresistible that when the same phrase was employed in the Fourteenth Amendment to restrain the action of the states, it was used in the same sense and with no greater extent; and that if in the adoption of that amendment it had been part of its purpose to perpetuate the institution of the grand jury in all the states, it would have embodied, as did the Fifth Amendment, express declarations to that effect." Hurtado v. California, Cal.1884, 4 S.Ct. 111, 110 U.S. 534, 28 L.Ed. 232.

62. Tennessee v. Whitworth, Tenn.1886, 6 S.Ct. 649, 117 U.S. 147, 29 L.Ed. 833.

The spirit of the Constitution will not justify an attempt to control its words. "While weighing arguments drawn from the nature of government, and from the general spirit of an instrument, and urged for the purpose of narrowing the construction which the words of that instrument seem to require, it is proper to place in the opposite scale those principles, drawn from the same sources, which go to sustain the words in their full operation and natural import. One of these, which has been pressed with great force by the counsel for the plaintiffs in error, is, that the judicial power of every well-constituted government must be coextensive with the legislative, and must be capable of deciding every judicial question which grows out of the constitution and laws. If any proposition may be considered as a political axiom, this, we think, may be so considered. In reasoning upon it as an abstract question, there would, probably, exist no contrariety of opinion respecting it. Every argument, proving the necessity of the department, proves also the propriety of giving this extent to it. We do not mean to say that the jurisdiction of the courts of the Union should be construed to be coextensive with the legislative, merely because it is fit that it should be so; but we mean to say that this fitness furnishes an argument in construing the Constitution which ought never to be overlooked, and which is most especially entitled to consideration when we are inquiring whether the words of the instrument which purport to establish this principle shall be contracted for the purpose of destroying it." Cohen v. Virginia, Va.1821, 19 U.S. 384, 6 Wheat. 384, 5 L.Ed. 257.

Although the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of an instrument expressly provide shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application. Sturges v. Crowinshield, Mass.1819, 17 U.S. 202, 4 Wheat. 202, 4 L.Ed. 529. See, also, Jacobson v. Massachusetts, Mass.1905, 25 S.Ct. 358, 197 U.S. 22, 49 L.Ed. 643, 3 Ann.Cas. 765.

63. Pollock v. Farmers L. & T. Co., N.Y.1895, 15 S.Ct. 912, 158 U.S. 618, 39 L.

sense in which they were used and understood at common law and at the time the Constitution and the amendments were adopted.[64] They were used in their normal or ordinary, as distinguished from their technical meaning.[65] Where any particular word or sentence is obscure or of doubtful meaning, taken by itself, its obscurity may be removed by comparing it with the words and sentences with which it stands connected.[66]

Ed. 1108; Martin v. Hunter, Va.1816, 14 U.S. 326, 1 Wheat. 326, 4 L.Ed. 97.

As words of general import. The words expressing the various grants in the Constitution are words of general import, and they are to be construed as such, and as granting to the full extent the powers named. Fairbank v. U. S., Minn.1901, 21 S.Ct. 648, 181 U.S. 287, 289, 45 L.Ed. 862.

64. Veazie Bank v. Fenno, Me.1869, 75 U.S. 542, 8 Wall. 542, 19 L.Ed. 482; Locke v. New Orleans, La.1866, 71 U.S. 172, 4 Wall. 172, 18 L.Ed. 334; Gibbons v. Ogden, 1824, 22 U.S. 1, 9 Wheat. 1, 6 L.Ed. 23; U. S. v. Harris, D.C.Ky.1866, 1 Abb. U.S. 110, 26 Fed.Cas.No.15,312; U. S. v. Block, D.C.Or.1877, 4 Sawy. (U.S.) 211, 24 Fed.Cas.No.14,609; Pardoning Power of President, 1852, 5 Op.Atty.Gen. 532, 535.

65. U. S. v. Sprague, 1931, 51 S.Ct. 220, 282 U.S. 716, 75 L.Ed. 640.

66. Rhode Island v. Massachusetts, R. I.1838, 37 U.S. 722, 12 Pet. 722, 9 L.Ed. 1233; Wheaton v. Peters, Pa.1834, 33 U.S. 661, 8 Pet. 661, 8 L.Ed. 1055; Beckwith's Case, 1880, 16 Ct.Cl. 250, 261.

"Necessary and proper."—"Almost all compositions contain words which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction that many words which import something excessive should be understood in a more mitigated sense—in that sense which common usage justifies. The word 'necessary' is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed by these several phrases. This comment on the word is well illustrated by the passage cited at the bar, from the 10th section of the 1st article of the Constitution. It is, we think, impossible to compare the sentence which prohibits a state from laying 'imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws,' with that which authorizes Congress 'to make all laws which shall be necessary and proper for carrying into execution' the powers of the general government, without feeling a conviction that the convention understood itself to change materially the meaning of the word 'necessary,' by prefixing the word 'absolutely.' This word, then, like others, is used in various senses; and, in its construction, the subject, the context, the intention of the person using them, are all to be taken into view." M'Culloch v. Maryland, Md.1819, 17 U.S. 414, 4 Wheat. 414, 4 L.Ed. 579.

"Just compensation." In view of the combination of the two words "just" and "compensation" in the Fifth Amendment, there can be no doubt that the compensation must be a full and perfect equivalent for the property taken. Monongahela Nav. Co. v. U. S., Pa.1893, 13 S.Ct. 622, 148 U.S. 327, 37 L.Ed. 463.

"Privileges and immunities."—"It seems agreed, from the manner of expounding or defining the words immunities and privileges, by the counsel on both sides, that a particular and limited operation is to be given to these words, and not a full and comprehensive one. It is agreed it does not mean the right of election, the right of holding offices, the right of being elected. The courts are of opinion it means that the citizens of all the states shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the state, in the same manner as the property of the citizens of the state is protected. It means such property shall not be liable to any taxes or burdens which the property of the citizens is not subject to. It may also mean that as creditors they shall be on the same footing with the state creditor, in the payment of the debts of a deceased debtor. It secures and protects personal rights. The way to expound a clause in the general government or Constitution of the United States is by comparing it with other

2. Interpretation at Time of Adoption

The Constitution is to be construed in the sense in which the words and terms used were understood by those who made and those who adopted it.[67] Courts do not ordinarily give the words therein, narrower meanings than they had in common parlance when it was written.[68] The term ex post facto, literally construed, would apply to any act operating upon a previous fact, yet it was understood at the time the Constitution was adopted, both in this country and in England, as embracing only criminal laws and laws providing for the recovery of penalties or forfeitures.[69]

3. Particular Powers, Duties, and Rights

The nature and objects of the particular powers, duties, and rights may be considered, with all the lights and aids of contemporary history, and the words given just such operation and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.[70] Where power is expressly conferred in general terms, it is not to be restricted to particular cases unless that construction grows out of the context expressly or by necessary implication.[71]

4. Liberal Construction

A liberal construction of the words and sentences should, generally, be given, and nice verbal criticism avoided.[72] It has been

parts, and considering them together." Campbell v. Morris, 1797, 3 Har. & M. (Md.) 535.

67. The Huntress, D.C.Me.1840, 2 Ware (U.S.) 89, 12 Fed.Cas.No.6,914; Padelford v. Savannah, 1854, 14 Ga. 439.

In the construction of the language of the Constitution here relied on, as indeed in all other instances where construction becomes necessary, we are to place ourselves as nearly as possible in the condition of the men who framed that instrument. Ex parte Bain, 1887, 7 S.Ct. 781, 121 U.S. 12, 30 L.Ed. 849.

68. U. S. v. Southeastern Underwriters Ass'n, 1944, 64 S.Ct. 1162, 322 U.S. 533, 88 L.Ed. 1440.

69. Locke v. New Orleans, La.1866, 71 U.S. 172, 4 Wall. 172, 18 L.Ed. 334; Carpenter v. Pennsylvania, Pa.1854, 58 U.S. 463, 17 How. 463, 15 L.Ed. 127.

70. Virginia v. Tennessee, 1893, 13 S.Ct. 728, 148 U.S. 519, 37 L.Ed. 537; Prigg v. Pennsylvania, Pa.1842, 41 U.S. 539, 16 Pet. 539, 10 L.Ed. 1060; Kendall v. U. S., Dist.Col.1838, 37 U.S. 524, 12 Pet. 524, 9 L.Ed. 1181; State v. Gibson, 1871, 36 Ind. 391.

71. Martin v. Hunter's Lessee, 14 U.S. 304, 1 Wheat. 304, 4 L.Ed. 97.

72. Lane County v. Oregon, Mass.1868, 74 U.S. 79, 7 Wall. 79, 19 L.Ed. 101; President's Power to Fill Vacancies in Recess of Senate, 1806, 12 Op.Atty.Gen. 32, 35.

"In performing the delicate and important duty of construing clauses in the Constitution of our country which involve conflicting powers of the government of the Union, and of the respective states, it is proper to take a view of the literal meaning of the words to be expounded, of their connection with other words, and of the general objects to be accomplished by the prohibitory clause, or by the grant of power." Brown v. Maryland, Md.1827, 25 U.S. 437, 12 Wheat. 437, 6 L. Ed. 678.

The word "writings" in the eighth clause of section 8, Article I., giving to Congress the power to secure to authors the exclusive right to their respective writings, is liberally construed to include original designs for engravings, prints, etc., but only such as are original and are founded in the creative powers of the mind. Trade-mark Cases, N.Y.1879, 100 U.S. 94, 10 Otto. 94, 25 L.Ed. 550.

said, however, that the phrase "obligation of contracts" should be construed strictly, and not be latitudinously extended to apply to obligations quasi ex contractu, implied contracts, or to obligations ex delicto, the obligation to pay damages.[73] Where the text is clear

Appointment to "vacancies that may happen." The President may fill during a recess of the Senate, by temporary commission, a vacancy that occurred during a previous session of that body. The word "happen" should be interpreted as being equivalent to "happen to exist." "The opposite construction is, perhaps, more strictly consonant with the mere letter. But it overlooks the spirit, reason, and purpose; and, like all constructions merely literal, its tendency is to defeat the substantial meaning of the instrument, and to produce the most embarrassing inconveniences. The construction which I prefer is perfectly innocent. It cannot possibly produce mischief without imputing to the President a degree of turpitude entirely inconsistent with the character which his office implies, as well as with the high responsibility and short tenure annexed to that office; while at the same time it insures to the public the accomplishment of the object to which the Constitution so sedulously looks—that the offices connected with their peace and safety be regularly filled." Executive Authority to Fill Vacancies, 1823, 1 Op.Atty.Gen. 631.

Fugitive from justice "charged" with crime. "But why should the word 'charged' be given a restricted interpretation? It is found in the Constitution, and ordinarily words in such an instrument do not receive a narrow, contracted meaning, but are presumed to have been used in a broad sense, with a view of covering all contingencies." Matter of Strauss, 1905, 25 S.Ct. 535, 197 U.S. 330, 49 L.Ed. 774.

As to the meaning of "taking," as used in the Fifth Amendment, the court said: "The argument of the defendant is that there is no taking of the land within the meaning of the constitutional provision, and that the damage is a consequential result of such use of a navigable stream as the government had a right to for the improvement of its navigation. It would be a very curious and unsatisfactory result, if in construing a provision of constitutional law, always understood to have been adopted for protection and security to the rights of the individual as against the government, and which has received the commendation of jurists, statesmen, and commentators as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it shall be held that if the government refrains from the absolute conversion of real property to the uses of the public it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction without making any compensation, because, in the narrowest sense of that word, it is not taken for the public use. Such a construction would pervert the constitutional provision into a restriction upon the rights of the citizen, as those rights stood at the common law, instead of the government, and make it an authority for invasion of private right under the pretext of the public good, which had no warrant in the laws or practices of our ancestors." Pumpelly v. Green Bay, etc., Canal Co., Wis.1871, 80 U.S. 177, 13 Wall. 177, 20 L.Ed. 557.

73. Harmanson v. Wilson, C.C.Va.1877, 1 Hughes (U.S.) 207, 11 Fed.Cas.No.6,074.

A corporation charter is a contract, within the meaning of the clause prohibiting the states from impairing the obligation of contracts. "It is more than possible that the preservation of rights of this description was not particularly in the view of the framers of the Constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the state legislature. But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American People when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general

THE UNITED STATES OF AMERICA IS AN ORGANIZATION SAME IS A CORPORATION

THE CONSTITUTION IS A CONTRACT.

A CORPORATION CHARTER IS A CONTRACT.

and distinct, no restriction on its plain and obvious meaning should be admitted unless the inference is irresistible.[74]

5. Transposing Words and Sentences

While transposing the words and sentences of a law may sometimes be tolerated, in order to arrive at the apparent meaning of the legislature, to be gathered from other parts or from the entire scope of the law, it is a very hazardous rule to adopt in the construction of an instrument so maturely considered as this Constitution was by its framers, and so severely examined and criticised by its opponents.[75]

6. Affirmative and Negative Words

A general rule has been laid down that affirmative words are to be given a negative operation, but this rule can be applied, and a negative be implied from affirmative words, only where the implication promotes, not where it defeats, the obvious intention of an article. Every part of the article must be taken into view, and that construction adopted which will consist with its words and promote its general intention. In the case of the grant to the Supreme Court of original jurisdiction in certain cases, a negative or exclusive sense must be given or it has no operation,[76] but in the grant of appellate jurisdiction, that jurisdiction may be exercised in every case cognizable under the third article of the Constitution, in the federal courts, in which original jurisdiction cannot be exercised. The extent of this judicial power is to be measured, not by giving the affirmative words of the distributive clause a negative operation in every possible case, but by giving their true meaning to the words which define its extent.[77]

VII. EFFECT OF EXCEPTIONS

The exceptions from a power mark its extent,[78] and an exception of any particular case presupposes that those which are not ex-

spirit of the instrument, as to justify those who expound the Constitution in making it an exception." Dartmouth College v. Woodward, N.H.1819, 17 U.S. 644, 4 Wheat. 644, 4 L.Ed. 629.

74. Martin v. Hunter's Lessee, 1816, 14 U.S. 304, 1 Wheat. 304, 4 L.Ed. 97.

75. Ogden v. Saunders, La.1827, 25 U.S. 267, 12 Wheat. 267, 6 L.Ed. 606.

76. Ex parte Vallandigham, 1863, 68 U.S. 253, 1 Wall. 253, 17 L.Ed. 589; Marbury v. Madison, Dist.Col.1803, 5 U.S. 174, 1 Cranch 174, 2 L.Ed. 60.

77. The affirmative grant of original jurisdiction to the Supreme Court of the United States "in all cases • • • in which a state shall be a party" does not prevent that court from constitutionally exercising appellate jurisdiction in a case in which a state is a party and in which a federal question is involved. Cohen v. Virginia, Va.1821, 19 U.S. 394, 6 Wheat. 394, 5 L.Ed. 257.

78. "If, then, there are in the Constitution plain exceptions from the power over navigation, plain inhibitions to the exercise of that power in a particular way, it is a proof that those who made these exceptions, and prescribed these inhibitions, understood the power to which they applied as being granted." Gibbons v. Ogden, N.Y.1824, 22 U.S. 191, 9 Wheat. 191, 6 L.Ed. 23.

CONSTITUTION FOR THE PEOPLE

PREAMBLE

Note 1

"For the United States of America"—C't'd
Philippine Islands 11
Puerto Rico 12
Hawaiian Islands 10
Philippine Islands 11
"Promote the general welfare" 6
"Provide for the common defense" 5
Puerto Rico 12
Secession by state 3
Substantive powers, Preamble as source of 13
"To form a more perfect union" 2–4
Federalist papers 4
Secession by state 3
"We the people of the United States" 1

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1. "We the people of the United States"

In holding the San Francisco laundry ordinances invalid, as depriving resident Chinese of the equal protection of the laws, the court said: "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.'" Yick Wo v. Hopkins, Cal.1886, 6 S.Ct. 1064, 118 U.S. 369, 30 L.Ed. 220.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. Dred Scott v. Sandford, Mo. 1857, 60 U.S. 404, 19 How. 404, 15 L.Ed. 691.

The Constitution was ordained and established by the people of the United States for themselves, for their own government and not for the government of the individual states. Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes. Barron v. Baltimore, Md.1833, 32 U.S. 247, 7 Pet. 247, 8 L.Ed. 672.

The Constitution emanated from the people, and was not the act of sovereign and independent states. The convention which framed the Constitution was indeed elected by the state legislatures. But the instrument, when it came from their hands, was a mere proposal, without obligation, or pretensions to it. It was reported to the then existing Congress of the United States, with a request that it might "be submitted to a convention of delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification." This mode of proceeding was adopted; and by the Convention, by Congress, and by the state legislatures, the instrument was submitted to the people. They acted upon it in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention. From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people; and is declared to be ordained, "in order to form a more perfect union, establish justice, insure domestic tranquillity, and

Note 1

secure the blessings of liberty to themselves and to their posterity." The assent of the states, in their sovereign capacity, is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance of, and could not be negatived by, the state governments. The Constitution, when thus adopted, was of complete obligation, and bound the state sovereignties. M'Culloch v. Maryland, Md.1819, 17 U.S. 403, 4 Wheat. 403, 4 L. Ed. 579. See, also, U. S. v. Cathcart, C. C.Ohio 1864, 1 Bond 556, 25 Fed.Cas.No. 14,756.

The Constitution of the United States was ordained and established not by the states in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be that the people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The Constitution was not, therefore, necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in state institutions, for the powers of the states depend on their own constitutions; and the people of every state had the right to modify and restrain them, according to their own views of policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, except so far as they were granted to the government of the United States. Martin v. Hunter, Va.1816, 14 U. S. 324, 1 Wheat. 324, 4 L.Ed. 97.

Under the Constitution we see the people acting as sovereigns of the whole country; and in the language of sovereignty, establishing a constitution by which it was their will that the state governments should be bound, and to which the state constitutions should be made to conform. Every state constitution is a compact made by and between the citizens of a state to govern themselves in a certain manner; and the Constitution of the United States is likewise a compact made by the people of the United States to govern themselves as to general objects, in a certain manner. Chisholm v. Georgia, Ga.1793, 2 U.S. 471, 2 Dall. 471, 1 L.Ed. 440, 462.

2. "To form a more perfect union"

Experience made the fact known to the people of the United States that they required a national government for national purposes. The separate governments of the separate states, bound together by the Articles of Confederation alone, were not sufficient for the promotion of the general welfare of the people in respect to foreign nations, or for their complete protection as citizens of the confederated states. For this reason, 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 themselves and their posterity, ordained and established the government of the United States, and defined its powers by a Constitution, which they adopted as its fundamental law and made its rule of action. U. S. v. Cruikshank, La.1876, 92 U.S. 542, 2 Otto. 542, 23 L.Ed. 588.

The Federal Constitution was, as its preamble recites, ordained and established by the people of the United States. It created not a confederacy of states, but a government of individuals. It assumed that the government and the Union which it created, and the states which were incorporated into the Union, would be indestructible and perpetual; and as far as human means could accomplish such a work, it intended to make them so. White v. Hart, Ga.1872, 80 U.S. 650, 13 Wall. 650, 20 L.Ed. 685.

The Constitution of the United States established a government, and not a league, compact, or partnership. It was constituted by the people. It is called a government. Legal Tender Cases, Tex. 1871, 79 U.S. 554, 12 Wall. 554, 20 L.Ed. 287. See, also, U. S., v. Cathcart, C.C. Ohio 1864, 1 Bond 556, 25 Fed.Cas.No.14,756.

"The union of the states never was a purely artificial and arbitrary relation. It began among the colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the neces-

ities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to 'be perpetual.' And when these articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual union, made more perfect, is not * * * Not only, therefore, can there be no loss of separate and independent autonomy to the states, through their union under the Constitution, but it may be not unreasonably said that the preservation of the states, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states." Texas v. White, Tex.1869, 74 U.S. 724, 7 Wall. 724, 19 L.Ed. 227.

"The new government was not a mere change in a dynasty, or in a form of government, leaving the nation or sovereignty the same, and clothed with all the rights and bound by all the obligations of the preceding one. But, when the present United States came into existence under the new government, it was a new political body, a new nation, then for the first time taking its place in the family of nations." Dred Scott v. Sandford, Mo.1857, 60 U.S. 441, 19 How. 441, 15 L. Ed. 691.

"That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations we are one and the same people. In many other respects the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects, is the government of the Union. It is their government, and in that character they have no other. America has chosen to be, in many respects, and to many purposes, a nation; and for all these purposes her government is complete; to all these objects it is competent. Cohen v. Virginia, Va.1821, 19 U.S. 381, 6 Wheat. 381, 5 L.Ed. 257, 259.

"The Constitution was for a new government, organized with new substantive powers, and not a mere supplementary charter to a government already existing. The confederation was a compact between states; and its structure and powers were wholly unlike those of the national government. The Constitution was an act of the people of the United States to supersede the confederation, and not to be engrafted on it as a stock through which it was to receive life and nourishment." Martin v. Hunter, Va. 1816, 14 U.S. 332, 1 Wheat. 332, 4 L.Ed. 97.

3. —— Secession by state

The ordinance of secession adopted by the convention and ratified by the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null, and Texas continued to be a state, and a state of the Union, notwithstanding those transactions. "The obligations of the state, as a member of the Union, and of every citizen of the state, as a citizen of the United States, remained perfect and unimpaired. It certainly follows that the state did not cease to be a state, nor her citizens to be citizens of the Union. If this were otherwise, the state must have become foreign, and her citizens foreigners. The war must have ceased to be a war for the suppression of rebellion, and must have become a war for conquest and subjugation." Texas v. White, Tex. 1869, 74 U.S. 726, 7 Wall. 726, 19 L.Ed. 227.

4. —— Federalist papers

It is worthy of remark that not only the first, but every succeeding Congress, as well as the late convention, have invariably joined with the people in thinking that the prosperity of America depended on its union. To preserve and perpetuate it was the great object of the people in forming that convention, and it is also the great object of the plan which the convention has advised them to adopt. With what propriety, therefore, or for what good purposes, are attempts at this particular period made by some men to depreciate the importance of the union? Or why is it suggested that three or four confederacies would be better than one? I am persuaded in my own mind that the people have always thought right on this subject, and that their universal and uniform attachment to the cause of the Union rests on great and weighty reasons, which I shall endeavor to develop and explain in some ensuing papers. They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention, seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. Jay, in The Federalist, No. II.

sively to the national government; those which may be exercised concurrently and independently by both; those which may be exercised by the states, but only until Congress shall see fit to act upon the subject. The authority of the state then retires and lies in abeyance until the occasion for its exercise shall recur. Ex parte McNiel, N.Y.1872, 80 U.S. 240, 13 Wall. 240, 20 L.Ed. 624.

"The national government, though supreme within its own sphere, is one of limited jurisdiction and specific functions. It has no faculties but such as the Constitution has given it, either expressly or incidentally by necessary intendment. Whenever any act done under its authority is challenged, the proper sanction must be found in its charter, or the act is ultra vires and void." Pacific Ins. Co. v. Soule, Cal.1869, 74 U.S. 444, 7 Wall. 444, 19 L.Ed. 95.

The Constitution was not formed merely to guard the states against danger from foreign nations, but mainly to secure union and harmony at home; for if this object could be attained, there would be but little danger from abroad; and to accomplish this purpose, it was felt by the statesmen who framed the Constitution, and by the people who adopted it, that it was necessary that many of the rights of sovereignty which the states then possessed should be ceded to the general government, and that, in the sphere of action assigned to it, it should be supreme, and strong enough to execute its own laws by its own tribunals, without interruption from a state or from state authorities. Ableman v. Booth, Wis.1859, 62 U.S. 517, 21 How. 517, 16 L.Ed. 169.

The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution; and if there be any who deny its necessity, none can deny its authority. To this supreme government ample powers are confided; and if it were possible to doubt the great purposes for which they were so confided, the people of the United States have declared that they are given "in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to themselves and their posterity." With the ample powers confided to this supreme government, for these interesting purposes, are connected many express and important limitations on the sovereignty of the states, which are made for the same purposes. The powers of the Union, on the great subjects of war, peace and commerce, and on many others, are in themselves limitations on the sovereignty of the states, but in addition to these, the sovereignty of the states is surrendered in many instances where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on Congress than a conservative power to maintain the principles established in the Constitution. Cohen v. Virginia, Va.1821, 19 U.S. 381, 6 Wheat. 381, 5 L.Ed. 257.

"The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The Constitution and laws of a state, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void. These states are constituent parts of the United States. They are members of one great empire—for some purposes sovereign, for some purposes subordinate." Id.

The government of the United States, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, "anything in the constitution or laws of any state to the contrary notwithstanding." M'Culloch v. Maryland, Md.1819, 17 U.S. 406, 4 Wheat. 406, 4 L. Ed. 579.

Whenever the terms in which a power is granted to Congress, or the nature of the power, required that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures as if they had been expressly forbidden to act on it. Sturges v. Crowninshield, Mass.1819, 17 U.S. 193, 4 Wheat. 193, 4 L.Ed. 529.

"Interposition" is an amorphous concept based on proposition that United States is a compact of states, any one of which may interpose its sovereignty against enforcement within its borders of any decision of Supreme Court or Act of Congress, and, in essence, doctrine denies constitutional obligation of states to respect those decisions of Supreme Court with which they do not agree; and the keystone of the interposition thesis, that the United States is a compact of states, was disavowed in preamble to Constitution. Bush v. Orleans Parish School Bd., D.C.La.1960, 188 F.Supp. 916, affirmed 81 S.Ct. 754, 365 U.S. 569, 5 L.Ed. 2d 806.

"It is generally, if not universally, conceded that the government of the United States is one of limited powers, and that no department possesses any authority not granted by the Constitution. It is not necessary, however, in order to prove the existence of a particular authority, to show a particular and express grant. The design of the Constitution was to establish a government competent to the direction and administration of the affairs of a great nation, and, at the same time, to mark, by sufficiently definite lines, the sphere of its operations. To this end it was needful only to make express grants of general such incidental and auxiliary powers as powers, coupled with a further grant of might be required for the exercise of the powers expressly granted. These powers are necessarily extensive. It has been found, indeed, in the practical administration of the government, that a very large part, if not the largest part, of its functions have been performed in the exercise of powers thus implied." Hepburn v. Griswold. Ky.1870, 75 U.S. 613, 8 Wall. 613, 19 L.Ed. 513.

"Whilst we hold it a sound maxim that no power should be conceded to the federal government which cannot be regularly and legitimately found in the charter of its creation, we acknowledge equally the obligation to withhold from it no power or attribute which, by the same charter, has been declared necessary to the execution of expressly granted powers, and to the fulfilment of clear and well-defined duties." U. S. v. Marigold, N.Y.1850, 50 U.S. 560, 9 How. 560, 13 L.Ed. 257.

A bond voluntarily given to the United States, and not prescribed by law, is a valid instrument, binding upon the parties in point of law. The United States have, in their political capacity, a right to enter into a contract, or to take a bond in cases not previously provided for by some law. It is an incident to the general right of sovereignty; and the United States, being a body politic, may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. U. S. v. Tingey, Dist. Col.1831, 30 U.S. 127, 5 Pet. 127, 8 L.Ed. 65.

2. Separate sovereignties

The people of the United States residing within any state are subject to two governments, one state and the other national; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. U. S. v. Cruikshank, La.1876, 92 U.S. 550, 2 Otto. 550, 23 L.Ed. 588.

"The general government, and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the states within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states." Bullington v. Day, Mass.1871, 78 U.S. 124, 11 Wall. 124, 20 L.Ed. 122, 123.

The perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence or of the right of self-government by the states. Under the Articles of Confederation each state retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the states were much restricted, still, all powers not delegated to the United States, nor prohibited to the states, are reserved to the states respectively, or to the people. Not only, therefore, can there be no loss of separate and independent autonomy to the states, through their union under the Constitution, but it may be not unreasonably said that the preservation of the states, and the maintenance of their governments, are as much within the design and care of the Constitution as preservation of the Union and the maintenance of the national government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states. Texas v. White, Tex. 1869, 74 U.S. 725, 7 Wall. 725, 19 L.Ed. 227.

Both the states and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the Confederate government, which acted, with powers greatly restricted,

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only upon the states. But in many articles of the Constitution the necessary existence of the states, and, within their proper spheres, the independent authority of the states, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. Lane County v. Oregon, Or.1869, 74 U.S. 76, 7 Wall. 76, 19 L.Ed. 101.

"Within the sphere allotted to them, the co-ordinate branches of the general government revolve, unobstructed by any legitimate exercise of power by the state governments. The powers exclusively given to the federal government are limitations upon the state authorities. But, with the exception of these limitations, the states are supreme; and their sovereignty can be no more invaded by the action of the general government than the action of the state governments can arrest or obstruct the course of the national power." Worchester v. Georgia, Ga.1832, 31 U.S. 570, 6 Pet. 570, 8 L.Ed. 483.

39. Reserved powers of states

The authority of the government is defined and limited by the Constitution, and all powers not granted to it by that instrument are reserved to the states or the people. No rights can be acquired under the Constitution or the laws of the United States except such as the government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the states. U. S. v. Cruikshank, La.1876, 92 U.S. 551, 2 Otto. 551, 23 L.Ed. 588. See, also, U. S. v. McCullagh, D.C.Kan.1915, 221 F. 288.

It is a familiar rule of construction of the Constitution of the Union that the sovereign powers vested in the state governments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the tenth article of the amendments, namely: "The powers not delegated to the United States are reserved to the states respectively, or to the people." The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication. Bullington v. Day, Mass.1871, 78 U.S. 124, 11 Wall. 124, 20 L.Ed. 122.

"It is elementary that our federal government is one of enumerated, specially defined powers, and powers essential to the execution of those specifically granted, and that our state governments are organized on the exact converse of that theory. The state has all the powers of an absolute, unrestrained sovereign, except so far as the state surrendered certain sovereign powers with which to constitute and create the federal government." American Coal Min. Co. v. Special Coal, etc., Commission, D.C.Ind.1920, 268 F. 563, appeal dismissed 42 S.Ct. 273, 258 U.S. 632, 66 L.Ed. 801.

40. Interference with state powers

McKinney's N. Y. Labor Law, § 241, subd. 4, requiring planking of beams in structural iron or steel work was not inapplicable to post office site purchased by the United States with the consent of New York on ground that provision was a direct interference with the government because contract for construction of post office was an "instrumentality of the federal government," since contractor in independent operation did not share any governmental immunity. James Stewart & Co. v. Sadrakula, N.Y. 1940, 60 S.Ct. 431, 309 U.S. 94, 84 L.Ed. 596, 127 A.L.R. 821.

"Among those matters which are implied, though not expressed, is that the Nation may not, in the exercise of its powers, prevent a state from discharging the ordinary functions of government, just as it follows from the second clause of Article VI of the Constitution, that no state can interfere with the free and unembarrassed exercise by the National Government of all the powers conferred upon it." South Carolina v. U. S., 1905, 26 S.Ct. 110, 199 U.S. 451, 50 L.Ed. 261, 4 Ann.Cas. 737.

Where arrangement between federal and state authority does not vest in federal authority powers amounting to substantial control over matters of local concern, co-operation between state and nation is lawful. Carolina Power & Light Co. v. South Carolina Public Service Authority, D.C.S.C.1937, 20 F.Supp. 854, affirmed 94 F.2d 520, certiorari denied 58 S.Ct. 1048, 1049, 304 U.S. 578, 82 L.Ed. 1541.

41. Separation of powers

Separation of powers was not instituted with idea that it would promote governmental efficiency, but was looked to as bulwark against tyranny. U. S. v.

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Brown, Cal.1965, 85 S.Ct. 1707, 381 U.S. 437, 14 L.Ed.2d 484.

It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether state or national, are divided into three grand departments, the executive, the legislative, and the judicial; that the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide those departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power that his assent is required to the enactment of all statutes and resolutions of Congress. This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each house of Congress. So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment. In the main, however, that instrument, the model on which are constructed the fundamental laws of the states, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confined by the Constitution to one of these departments cannot be exercised by another. Kilbourn v. Thompson, Dist.Col. 1881, 103 U.S. 191, 13 Otto. 191, 26 L.Ed. 377, 383.

"The Constitution is the fundamental law of the United States. By it the people have created a government, defined its powers, prescribed their limits, distributed them among the different departments, and directed, in general, the manner of their exercise. No department of the government has any other powers than those thus delegated to it by the people. All the legislative power granted by the Constitution belongs to Congress; but it has no legislative power which is not thus granted. And the same observation is equally true in its application to the executive and judicial powers granted respectively to the President and the courts. All these powers differ in kind, but not in source or in limitation. They all arise from the Constitution, and are limited by its terms." Hepburn v. Griswold, Ky.1870, 75 U.S. 611, 8 Wall. 611, 19 L.Ed. 513.

The departments of the government are legislative, executive and judicial. They are co-ordinate in degree to the extent of the powers delegated to each of them. Each, in the exercise of its powers, is independent of the other, but all rightfully done by either, is binding upon the others. The Constitution is supreme over all of them, because the people who ratified it have made it so; consequently, anything which may be done unauthorized by it is unlawful. But it is not only over the departments of the government that the Constitution is supreme. It is so, to the extent of its delegated powers, over all who made themselves parties to it, states as well as persons, within those concessions of sovereign powers yielded by the people of the states, when they accepted the Constitution in their conventions. Dodge v. Woolsey, Ohio 1856, 59 U.S. 347, 18 How. 347, 15 L.Ed. 401.

None of the three branches of government may question the motive which prompted action by another branch, but the question is always reduced to power or authority of other branch to take such action. First Federal Savings & Loan Ass'n of Wisconsin v. Loomis, C.C.A.Wis.1938, 97 F.2d 831, 121 A.L.R. 99, question certified 59 S.Ct. 92, 305 U.S. 564, 83 L.Ed. 355, certiorari dismissed 59 S.Ct. 363, 305 U.S. 666, 83 L.Ed. 432.

Even if Congress made a mistake in legislating, court could not exercise legislative functions to correct the mistake. Preston v. White, 1937, 92 F.2d 813, 25 C.C.P.A., Patents, 1219.

Executive, legislative, and judicial Departments are independent of each other, and courts generally refuse to invade province of legislative bodies. City of Wheeling v. John F. Casey Co., C.C.A.W.Va.1936, 85 F.2d 922.

Doctrine of separation of powers did not permit federal court to order Department of the Interior to request Congress for relief for entrymen on irrigation proj-

aside, although if they be plainly antagonistic to the Constitution it is the duty of the court to so declare. Nicol v. Ames, Ill.1899, 19 S.Ct. 522, 173 U.S. 515, 43 L.Ed. 786.

Taxes should be imposed by Congress, not by courts, and when doubt arises as to taxability, doubt should be resolved in favor of taxpayer. Gellman v. U. S., C.A. Minn.1956, 235 F.2d 87.

The mere fact of enactment of a statute raises a presumption of constitutionality, and burden of proving otherwise is on party so asserting. Mount Tivy Winery v. Lewis, D.C.Cal.1942, 42 F.Supp. 636, affirmed 134 F.2d 120.

There is strong presumption in favor of the constitutionality of an act of Congress. Id.

Every possible presumption is in favor of validity of statute until contrary is shown beyond rational doubt. Feldman v. City of Cincinnati, D.C.Ohio 1937, 20 F.Supp. 531.

Congressional determination of what is public purpose effected by exercising power to levy taxes for general welfare, although favored by strong presumption of correctness, is reviewable by courts. John A. Gebelein, Inc., v. Milbourne, D. C.Md.1935, 12 F.Supp. 105.

34. Evidence, rules of

"It is only in cases where a stamp has been omitted from the written instrument with intent to defraud the revenue laws of the nation that state courts will decline to receive it in evidence." Spoon v. Frambach, 1901, 86 N.W. 106, 83 Minn. 301. See, also, Muscatine v. Sterneman, 1870, 30 Iowa 526, 6 Am.Rep. 685; Thomson v. Wilson, 1868, 26 Iowa 120; Cedar Rapids, etc., R. Co. v. Stewart, 1868, 25 Iowa 115; McAfferty v. Hale, 1868, 24 Iowa 355; McBride v. Doty, 1867, 23 Iowa 122; Brown v. Crandal, 1867, 23 Iowa 112; Doud v. Wright, 1867, 22 Iowa 336; Barney v. Ivins, 1867, 22 Iowa 163; Botkins v. Spurgeon, 1866, 20 Iowa 598; Miller v. Bone, 1865, 19 Iowa 571; Deskin v. Graham, 1965, 19 Iowa 553; O'Hare v. Leonard, 1865, 19 Iowa 515; Hugus v. Strickler, 1865, 19 Iowa 413; Grinnell v. Mississippi, etc., R. Co., 1864, 18 Iowa 570; Mussellman v. Mauk, 1865, 18 Iowa 239; Woodson v. Randolph, 1800, 3 Va. 128.

Congress has the power to require negotiable instruments to be stamped and to punish an intentional evasion of the law, but a state has the exclusive power to say what shall be evidence in her own courts of justice, in a domestic transaction wholly unconnected with the general government. Craig v. Dimock, 1868, 47 Ill. 308.

Congress, in the exercise of its unquestioned right to levy and collect taxes, has no power to enact rules regulating judicial proceedings, and the competency of evidence upon the trial of causes in state courts, and Congress has, therefore, no authority to declare that a written instrument of any kind shall not be received as evidence in a state court, unless it is stamped; such a restriction appertaining alone to the legislative authority of the state. Holt v. Board of Liquidators, 1881, 33 La.Ann. 673, 675. See, also:

Arkansas.—Dumpass v. Taggart, 1870, 26 Ark. 398, 7 Am.Rep. 623.

Connecticut.—Garland v. Gaines, 1901, 49 A. 19, 73 Conn. 662, 84 Am.St.Rep. 182.

Georgia.—Small v. Slocumb, 1900, 37 S. E. 481, 112 Ga. 279, 81 Am.St.Rep. 50.

Louisiana.—Pargoud v. Richardson, 1878, 30 La.Ann. 1286.

Maine.—Wade v. Foss, 1902, 52 A. 640, 96 Me. 230; Wade v. Curtis, 1902, 52 A. 762, 96 Me. 309.

Michigan.—Sammons v. Halloway, 1870, 21 Mich. 162, 4 Am.Rep. 465; Fifield v. Close, 1867, 15 Mich. 505.

Mississippi.—Davis v. Richardson, 1871, 45 Miss. 499, 7 Am.Rep. 732.

New York.—Gilbert v. Sage, 1874, 57 N. Y. 639; Davy v. Morgan, 1868, 56 Barb. 218.

Rhode Island.—Cassidy v. St. Germain, 1900, 46 A. 35, 22 R.I. 53.

South Carolina.—Kennedy v. Roundtree, 1900, 37 S.E. 942, 59 S.C. 324, 82 Am. St.Rep. 841.

Tennessee.—Insurance Cos. v. Estes, 1901, 62 S.W. 149, 106 Tenn. 472, 52 L.R.A. 915, 82 Am.St.Rep. 892; Sporrer v. Efler, 1870, 1 Heisk.(Tenn.) 633.

Texas.—Watson v. Mirike, 1901, 61 S.W. 538, 25 Tex.Civ.App. 527.

II. DEBTS OF UNITED STATES

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II. Definition

The debts of the United States are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. U. S. v. Realty Co., La. 1896, 16 S.Ct. 1120, 163 U.S. 440, 41 L.Ed. 215. See also, U. S. Sugar Equalization Board, Inc., v. P. De Ronde & Co., C.C.A.Del.1925, 7 F.2d 981, certiorari dismissed 46 S.Ct. 631, 271 U.S. 69, 70 L.Ed. 1154; Burkhardt v. U. S., 1949, 84 F. Supp. 553, 113 Ct.Cl. 658.

52. Moral obligations and gratuities

Congress could impose on a government a new obligation where there had been none before, for work performed which was beneficial to the government and for which Congress thought claimant had not been adequately compensated, since Congress' power to provide for payment of debts is not restricted to payment of those obligations which are legally binding on the government, but extends to creation of such obligations in recognition of claims which are merely moral or honorary. Pope v. U. S., 1944, 65 S.Ct. 16, 323 U.S. 1, 89 L.Ed. 3.

Congress, by creation of a legal, in recognition of a moral, obligation to pay claims for work performed for the government did not encroach upon judicial function which the Court of Claims had previously exercised in adjudicating that the obligation was not legal. Id.

Congress is the only body under the Constitution which has the authority to consent to the assumption of liability by the United States or to authorize others to assume such liability. Brown v. U. S., 1952, 122 Ct.Cl. 361.

53. Priority of debts

Under the power of the United States, Congress has the power to enact that debts due to the United States should have priority of payment out of the estate of an insolvent debtor, which the law of England gave to debts due to the Crown. U. S. v. Fisher, Pa.1804, 6 U.S. 358, 2 Cranch. 358, 2 L.Ed. 304. See, also, Spokane County v. U. S., 1929, 49 S.Ct. 321, 279 U.S. 80, 73 L.Ed. 621; Legal Tender Cases, N.Y.1884, 4 S.Ct. 122, 110 U.S. 440, 28 L.Ed. 204.

Under 31 U.S.C.A. § 191 according preference to claims of the United States against an insolvent, a lien against bankrupt's realty for unpaid federal income taxes which was effected by filing as assessment on December 7, 1931, was entitled to priority over liens for Illinois State taxes for 1930 and 1931, the amount of which was not fixed by assessment until after federal lien had attached, notwithstanding state liens attached as inchoate liens prior to federal lien by virtue of Smith-Hurd Ann.St. c. 120, § 238 making real estate taxes a prior lien from and after April 1, of the year in which taxes are levied until paid. U. S. v. Reese, C.C.A.Ill.1942, 131 F.2d 466, 51 Am.Bankr.Rep.N.S., 660.

54. Particular debt transactions

Tax imposed under former provisions of 26 U.S.C.A. §§ 2470–2480 on processing of coconut oil, and providing that taxes collected with respect to coconut oil of Philippine production shall be held as a separate fund and paid to the treasury of the Philippine Islands, is valid as an exercise of the power of Congress to levy taxes to pay the "debts" of the United States. Cincinnati Soap Co. v. U. S., Neb.1937, 57 S.Ct. 764, 301 U.S. 308, 81 L.Ed. 1122.

Whether a tax serves to pay the debts of the United States is a practical question addressed to the lawmaking department, and it requires a very plain case to warrant the courts in setting aside the conclusion of Congress in that regard. Id.

TITLE 26 — TREASURY OF THE PHILIPPINE ISLANDS

III. COMMON DEFENSE AND GENERAL WELFARE

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N. J. v. Tugwell, 1936, 85 F.2d 208, 66 App.D.C. 42.

Congress can exercise its constitutional power to raise and spend money for purpose of relieving general economic distress. Greenwood County v. Duke Power Co., C.C.A.S.C.1936, 81 F.2d 986, reversed on other grounds 57 S.Ct. 202, 299 U.S. 259, 81 L.Ed. 178.

Whether statute authorizing appropriation provides for general welfare must be determined in first instance by Congress, which must be accorded wide discretion, and courts may not interfere with congressional determination unless it clearly and indubitably appears that purpose for which tax is to be laid, collected, and appropriated, is not within constitutional limitation. Kansas Gas & Electric Co. v. City of Independence, Kan., C.C.A.1935, 79 F.2d 32, 100 A.L.R. 1479, rehearing denied 79 F.2d 638.

Congress may spend money in aid of the general welfare. U. S. v. Cain, D.C. Miss.1933, 113 F.Supp. 304, affirmed 211 F.2d 375, certiorari denied 74 S.Ct. 868, 347 U.S. 1013, 98 L.Ed. 1136.

Congress has power to appropriate money to promote general welfare, and its determination that certain projects are in furtherance of general welfare is decisive, unless arbitrarily made and clearly wrong. U. S. v. Boyle, D.C.Ohio 1943, 52 F.Supp. 906, affirmed 65 S.Ct. 280, 323 U.S. 329, 89 L.Ed. 274.

Under authority of Congress to spend money in aid of the "general welfare," the discretion to determine between particular and general welfare belongs to Congress, unless the choice is clearly wrong or a display of arbitrary power, not an exercise of judgment, and courts will respect judgment of Congress unless the use be palpably without reasonable foundation or is shown to involve an impossibility. In re U. S., D.C. N.Y.1939, 28 F.Supp. 758.

There is a middle ground between particular welfare and "general welfare" for which Congress is authorized to spend money. Id.

Congress is judge of whether tax is for general welfare, and judicial review of its decision is limited to determining whether there is any reasonable ground for conclusion reached by Congress. Larabee Flour Mills Co. v. Nee, D.C.Mo. 1935, 12 F.Supp. 305, remanded on other grounds 81 F.2d 623.

Tax is for "public purpose," within constitutional provision empowering Congress to levy taxes for "general welfare," where public benefit is direct, although individual or class obtains incidental advantage. John A. Gebelein, Inc. v. Milbourne, D.C.Md.1935, 12 F.Supp. 105.

General welfare clause requires that welfare be general rather than special and does not empower Congress to appropriate federal funds for local or state benefit; such appropriation being restricted to purposes of common defense and of national benefit, affecting nation as whole. Washington Water Power Co. v. City of Coeur D'Alene, D.C.Idaho 1934, 9 F.Supp. 203.

80. Limitation on power to tax

The power of Congress to tax, expressly conferred by general welfare clause, and the power to authorize expenditures impliedly conferred by such clause, are not limited by the direct grants of legislative power found in other clauses of Constitution. U. S. v. Butler, Mass.1936, 56 S.Ct. 312, 297 U.S. 1, 80 L.Ed. 477. See, also, Greenwood County v. Duke Power Co., C.C.A.S.C.1936, 81 F.2d 986, reversed on other grounds 57 S.Ct. 202, 299 U.S. 259, 81 L.Ed. 178; Walker v. Home Owners' Loan Corporation, D.C.Cal.1938, 25 F.Supp. 589.

Congress possesses no general power to regulate for promotion of general welfare but is limited to exercise of those powers which are granted it by Constitution, and those powers must be either expressly given or arise by necessary implication. U. S. v. Sanders, D.C.Okl. 1951, 99 F.Supp. 113, reversed on other grounds 196 F.2d 895, certiorari denied 73 S.Ct. 33, 344 U.S. 829, 97 L.Ed. 645.

"General welfare" clause, within constitutional provision empowering Congress to lay taxes, to pay debts, and provide for "general welfare," is itself not an independent grant of power, but a limitation on power to tax. John A. Gebelein, Inc. v. Milbourne, D.C.Md.1935, 12 F.Supp. 105. See, also, U. S. v. Boyer, D.C.Mo.1898, 85 F. 425.

"General welfare" clause, within constitutional provision empowering Congress to lay taxes, to pay debts, and provide for "general welfare," though constituting a limitation on the power to levy taxes, is not itself limited to particular objects mentioned in the several other powers specifically granted to Congress. John A. Gebelein, Inc., v. Milbourne, D.C.Md.1935, 12 F.Supp. 105. See, also, 1935, 38 Op.Atty.Gen. 258.

Under the "general welfare" provision of this clause, Congress can enact laws affecting the rights of parties in pro-

The Home Owners' Loan Corporation is political arm of government for execution of federal powers and within general welfare clause of Constitution. Walker v. Home Owners' Loan Corporation, D.C.Cal.1938, 25 F.Supp. 589.

The establishment of the Home Owners' Loan Corporation was within the scope of the constitutional powers of Congress to tax, borrow, and make appropriations for the general or national welfare. Prato v. Home Owners' Loan Corporation, D.C.Mass.1938, 24 F.Supp. 844, reversed on other grounds 106 F.2d 128.

The function in which the government is engaged through the Civilian Conservation Corps in providing employment as well as vocational training to unemployed citizens for the performance of useful work and in salvaging and conserving the natural resources of the United States is authorized by this clause. U. S. v. Query, D.C.S.C.1938, 21 F.Supp. 784.

Congress may enact rent control legislation in time of war to preserve the economic security of the nation, as well as to provide for the common defense, so that, whenever a conflict exists between the state and federal laws pertaining to such legislation, the federal law must take precedence over the state law so far as it is consistent with the constitutional sanction. Ricci v. Claire, 1943, 33 A.2d 591, 21 N.J.Misc. 266.

The Home Owners' Loan Act of 1933, 12 U.S.C.A. § 1461 et seq., which was designed to relieve distress of mortgage foreclosures, is a constitutional exercise of congressional power under the general welfare clause. Home Owners' Loan Corporation v. Barone, 1937, 298 N.Y.S. 531, 164 Misc. 187.

The National Housing Act, 12 U.S.C.A. § 1701 et seq., is within the general welfare clause. 1935, 38 Op.Atty.Gen. 258.

84. —— Public works projects

Congress has power to promote the general welfare through large scale projects for reclamation, irrigation, and other internal improvement. U. S. v. Gerlach Live Stock Co., Ct.Cl.1950, 70 S.Ct. 955, 339 U.S. 725, 94 L.Ed. 1231, 20 A.L.R. 2d 633.

The taking of property for low-cost housing projects pursuant to 40 U.S.C.A. § 421, is such "public use" as will authorize exercise of power of eminent domain, since increase of employment and stimulation of industry and reduction of illness, disease and crime brought about by such projects have beneficial effect upon nation as a whole and promote the public welfare. Oklahoma City v. Sanders, C.C.A.Okl.1938, 94 F.2d 323, 115 A.L.R. 363.

Under the federal system, municipal or state police power having been lodged and reserved in the state, a corresponding power in appropriate cases naturally arises under general welfare provision of federal constitution. Id.

Congress had power, by passing 15 U.S.C.A. § 701 et seq., to make large appropriation for public works and to control projects to which appropriation was allocated, though projects were local in their nature when considered separately. School Dist. No. 37, Clark County v. Isackson, C.C.A.Wash.1937, 92 F.2d 768, certiorari denied 58 S.Ct. 521, 303 U.S. 638, 82 L.Ed. 1096.

The Home Owners' Loan Act of 1933, 12 U.S.C.A. § 1461 et seq. is not an act regulating commerce such as might make applicable the jurisdictional provisions; rather it rests upon Congress' power to tax and make appropriation for general welfare. Mamber v. Second Federal Sav. & Loan Ass'n of Boston, D.C.Mass.1967, 275 F.Supp. 170.

40 U.S.C.A. § 403 authorizing federal grants and loans for public works held beyond power of Congress under general welfare clause, especially in view of Tenth Amendment, as applied to proposed federal grant and loan to municipality for electric plant, where it was alleged that construction of plant would give employment to only 160 men for 6 months, and where it appeared that purpose of federal aid was not so much unemployment relief as lowering of rates for electricity. Washington Water Power Co. v. City of Coeur D'Alene, D.C.Idaho 1934, 9 F.Supp. 263.

Proposed grant or loan of funds to city by Federal Public Works Administration for extension of municipal waterworks plant held sustainable under general welfare clause of Federal Constitution. Ohio Power Co. v. Craig, 1935, 197 N.E. 820, 50 Ohio App. 239.

IV. UNIFORMITY OF TAXATION

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101. Historical

The proceedings of the Continental Congress make it clear that the words "uniform throughout the United States," which were afterwards inserted in the Constitution of the United States, had, prior to its adoption, been frequently used, and always with reference purely to geographical uniformity and as synonymous with the expression, "to operate generally throughout the United States." Knowlton v. Moore, N.Y.1900, 20 S.Ct. 747, 178 U.S. 96, 44 L.Ed. 968.

102. Construction

The clause that "all duties shall be uniform throughout the United States" refers to the states whose people united to form the Constitution and such as have since been admitted to the Union upon an equality with them. In determining the meaning of the words "uniform throughout the United States," consideration should not only be given to the provisions forbidding preference being given to the parties of one state over those of another, but to the other clauses declaring that no tax or duty shall be laid on articles exported from any state, and that no state shall, without the consent of Congress, lay any imposts or duties upon imports or exports, nor any duty on tonnage. The object of all these was to protect the states which united in forming the Constitution from discriminations by Congress which would operate unfairly or injuriously upon some states and not equally upon others. Thus construed together, the purpose is irresistible that the words "throughout the United States" are indistinguishable from the words "among or between the several states," and that these prohibitions were intended to apply only to commerce between ports of the several states as they then existed or should thereafter be admitted to the Union. Downes v. Bidwell, N.Y.1901, 21 S.Ct. 770, 182 U.S. 244, 45 L.Ed. 1088.

103. Limitation on power of Congress

The grant of power to tax is limited to two ways: The revenue must be collected for public purposes, and all duties, imposts, and excises must be uniform throughout the United States. South Carolina v. U. S., 1905, 26 S.Ct. 110, 199 U.S. 450, 50 L.Ed. 261, 4 Ann.Cas. 737.

A general power is given to Congress to lay and collect taxes, of every kind or nature, without any restraint, except on exports; but two rules are prescribed for their government, namely, uniformity and apportionment: three kinds of taxes, to wit, duties, imposts, and excises, by the first rule, and capitation or other direct taxes, by the second rule. Hylton v. U. S., Va.1796, 3 U.S. 171, 3 Dall. 171, 1 L.Ed. 556.

Taxation by Congress is limited to those forms of taxes described in the Constitution, and with respect to them the only limitations are that a direct tax shall be apportioned between the states and that duties, imposts, and excises shall be uniform and levied only for the purposes specified. Davis v. Boston & M. R. Co., C.C.A.Mass.1937, 89 F.2d 363.

Power of Congress to impose excise taxes is subject only to limitation that they be for the public welfare and be uniform throughout the United States. Chas. C. Steward Mach. Co. v. Davis, C.C.A.Ala.1937, 89 F.2d 207, affirmed 57 S.Ct. 883, 301 U.S. 548, 81 L.Ed. 863, 109 A.L.R. 1293.

The power of Congress to tax, as given in the Constitution, has only one exception and two qualifications; Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Kelly v. Lewellyn, D.C.Pa.1921, 274 F. 108.

The only express limitation found in the Constitution on the power of Congress to impose indirect taxes is that such taxes must be uniform throughout

The only rule of uniformity prescribed by the Constitution with respect to duties, imposts, and excises laid by Congress is the territorial uniformity which this section requires. La Belle Iron Works v. U. S., 1921, 41 S.Ct. 528, 256 U.S. 377, 65 L.Ed. 998.

Geographical uniformity is that which is prescribed. Patton v. Brady, Va.1902, 22 S.Ct. 493, 184 U.S. 622, 46 L.Ed. 713. See, also, Brushaber v. Union Pac. R. Co., N.Y.1916, 36 S.Ct. 236, 240 U.S. 1, 60 L.Ed. 493, Ann.Cas.1917B, 713, L.R.A. 1917D, 414; Flint v. Stone Tracy Co., 1911, 31 S.Ct. 342, 220 U.S. 107, 55 L.Ed. 389, Ann.Cas.1912B, 1312; Munn v. Bowers, C.C.A.N.Y.1931, 47 F.2d 204, certiorari denied 51 S.Ct. 492, 283 U.S. 845, 75 L.Ed. 1454.

The uniformity here prescribed has reference to the various localities in which the tax is intended to operate, and the tax is uniform when it operates with the same force and effect in every place where the subject of it is found. Head Money Cases, N.Y.1884, 5 S.Ct. 247, 112 U.S. 596, 28 L.Ed. 798. See, also, Billings v. U. S., N.Y.1914, 34 S.Ct. 421, 232 U.S. 261, 58 L.Ed. 596; C. J. Tower & Sons v. U. S., Cust.Ct.1955, 135 F.Supp. 874.

Congress has power to tax non-discriminatorily many activities, in which a State may engage, but Congress can exempt a State from burden of taxes that otherwise fall uniformly on others. U. S. v. State Road Dept. of Fla., C.A.Fla. 1958, 255 F.2d 516.

The constitutional requirement of uniformity of excise taxation is satisfied when, by the provisions of the tax law, the rule of liability is the same in all parts of the United States. Heitsch v. Kavanagh, C.A.Mich.1952, 200 F.2d 178, certiorari denied 73 S.Ct. 829, 345 U.S. 939, 97 L.Ed. 1365.

Provision of this clause that all duties, imports and excises shall be uniform throughout the United States was not intended to assure equality of tax burden upon individual taxpayers of similar class; rather geographical uniformity, not uniformity of intrinsic equality and operation, is all that was intended. Miniature Vehicle Leasing Corp. v. U. S., D. C.N.J.1967, 266 F.Supp. 697.

This clause requires only geographic and not intrinsic uniformity, or, that same rules of liability for taxes shall apply generally throughout United States to each subject of an indirect tax, wherever it may be found. Heitsch v. Kavanagh, D.C.Mich.1951, 97 F.Supp. 749, affirmed 200 F.2d 178, certiorari denied 73 S.Ct. 829, 345 U.S. 939, 97 L.Ed. 1365.

Though extent and incidence of federal taxes are not infrequently affected by differences in state laws, such variations do not, except in extreme cases, infringe constitutional prohibitions against delegation of taxing power or requirement or geographical uniformity. Gottlieb v. White, C.C.A.Mass.1934, 69 F.2d 792, certiorari denied 54 S.Ct. 867, 292 U.S. 657, 78 L.Ed. 1505.

When a revenue law is made by its terms applicable to all the states of the Union, without distinction or discrimination, it cannot be successfully questioned on the ground that it is not uniform, in the sense of the Constitution, merely because its operation or working may be wholly different in one state from that in another. Darling v. Berry, C.C.Iowa 1882, 13 F. 659.

To comply with "uniformity" required by this section, it is not necessary that excise tax should fall with equal force on each citizen, but uniformity merely calls for operation of statute or plan of tax in same way wherever subject of tax may be found and is concerned only with geographical uniformity. Davis v. Boston & Maine R. R., D.C.Mass.1936, 17 F.Supp. 97, reversed on other grounds 89 F.2d 308.

108. Applicability to territories

The constitutional restrictions on power of Congress to deal with articles brought into or sent out of the United States do not apply to articles brought into or sent out of the Philippine Islands. Hooven & Allison Co. v. Evatt, Ohio 1945, 65 S.Ct. 870, 324 U.S. 652, 89 L.Ed. 1252, rehearing denied 65 S.Ct. 1198, 325 U.S. 892, 89 L.Ed. 2004.

Puerto Rico and Philippine Islands are not part of "United States," within this clause. Neuss Hesslein & Co. v. Edwards, D.C.N.Y.1928, 24 F.2d 989.

The clause requiring "that all duties, imposts, and excises shall be uniform throughout the United States," can have no application to a state or territorial legislature. A provision in an organic act of a territory that the "legislative power of the territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States locally applicable," contains no express limitation of power in the matter of taxation and provides in effect that the territorial legislature may not invade the domain of Congress as to subjects of legislation, but aside

from that it concedes to it all the powers of a legislature of a state. Peacock v. Pratt, C.C.A.Hawaii 1903, 121 F. 772.

The word uniform or uniformity as used in 48 U.S.C.A. § 78 providing that all taxes shall be uniform on the same class of subjects, is the same as used in this clause where Congress was given power to lay excise taxes. Hess v. Mullaney, 1950, 91 F.Supp. 139, 12 Alaska 696, reversed on other grounds 189 F.2d 417, 13 Alaska 276.

TITLE 48 U.S.C.A. TO TAX CODE. TITLE 26

109. Regulation of commerce

A direct regulation of commerce, such as the prohibition in the Merchant Marine Act of June 5, 1920, 46 U.S.C.A. § 883, against the transportation of merchandise by water over any part of the route between points in the United States in any other vessel than one built in and documented under the laws of the United States, and owned by persons who are citizens of the United States, or in vessels to which the privilege of engaging in the coastwise trade is extended by that act, is not controlled by the provisions of this section of the Constitution that all duties, imposts, and excises shall be uniform throughout the United States. Alaska v. Troy, Alaska 1922, 42 S.Ct. 241, 258 U.S. 101, 66 L.Ed. 487.

110. Particular federal taxes—Bills of lading

War Revenue Act June 13, 1898, c. 448, 30 Stat. 448, providing that "it shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation; and there shall be duly attached and canceled, as in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent," satisfies the constitutional requirement of uniformity. Taxes—Contract, 1898, 22 Op. Atty.Gen. 194.

111. —— Estate and inheritance tax

The death of either the husband or the wife of a Texas community effects sufficient alteration in the spouses' possession and enjoyment and reciprocal powers of control and disposition of the community property as to warrant the imposition of an excise tax measured by the value of the entire community, and 26 U.S.C.A. § 811(e) (2) imposing such tax does not offend against uniformity provision of this clause or Amend. 5, or other constitutional provisions. U. S. v. Rompel, Tex.1945, 66 S.Ct. 191, 326 U.S. 694, 90 L.Ed. 116, rehearing denied 66 S.Ct. 526, 327 U.S. 814, 90 L.Ed. 1038.

Congress may tax real estate or chattels if the tax is apportioned, and may, without apportionment, lay an excise upon a particular use or enjoyment of property or the shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property. Fernandez v. Wiener, La.1945, 66 S.Ct. 178, 326 U.S. 340, 90 L.Ed. 116, rehearing denied 66 S.Ct. 525, 327 U.S. 814, 90 L.Ed. 1038.

The power of Congress to impose death taxes is not limited to transfers at death, but extends to the creation, exercise, acquisition, or relinquishment of any power or legal privilege incident to the ownership of property and occasioned by death. Id.

The power to tax property embraces the power to tax any of its incidents or the use or enjoyment of them, such as sales or gifts, or the exercise or nonexercise, or relinquishment of a power of disposition of property where other indicia of ownership are lacking. Id.

Revenue Act 1926, § 301, 26 U.S.C.A. § 1093, imposing an inheritance tax, but providing that the taxpayer shall be credited with the amount of any inheritance tax actually paid to any state, as applied to estates of Florida, where a state inheritance tax is prohibited by the state Constitution, is not lacking in the uniformity required by this clause. State of Florida v. Mellon, Fla.1927, 47 S.Ct. 265, 273 U.S. 12, 71 L.Ed. 511.

An Act of Congress imposing a tax on legacies and distributive shares in personal property, exempting those below a certain amount and classifying the rate of tax according to the relationship or absence of relationship of the taker to the deceased, and providing for a rate progressing by the amount of the legacy or share, is not repugnant to the requirement that "the duties, imposts, and excises shall be uniform throughout the United States." Knowlton v. Moore, N.Y.1900, 20 S.Ct. 747, 178 U.S. 87, 44 L.Ed. 969. See, also, High v. Coyne, C.C.Ill. 1899, 93 F. 450, affirmed 20 S.Ct. 747, 178 U.S. 111, 44 L.Ed. 997.

Estate tax rates are applied generally throughout the United States and opportunities to settle and compromise disputes as to existence of tax liabilities are