

## **PART II**

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# **The Federal System**

# 5. The Text of the Constitution

## We the People

### Article II

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 States, and the Electors in each State shall have the Qualifications requisite for Electors in that State.

Section 3. The Senate shall be composed of two Senators from each State, chosen by the Electors in each State, for six Years, and each Senator shall have the Qualifications requisite for Electors in that State.

Section 4. The Electors in each State shall have the Qualifications requisite for Electors in that State, and shall be chosen in each State in the Manner which the Legislature thereof may determine.

Section 5. The Senate shall be organized on the first Meeting thereof, and shall choose its Officers and a President pro tempore, who shall act in the Absence of the President.

Section 6. The Senate shall have the sole Power to try all Impeachments, when the President is absent, and when the President is present, the Chief Justice shall preside: and no Person shall be convicted without the Concurrence of two thirds of the Members present.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as to the Form thereof.

Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to regulate Commerce with foreign Nations, to borrow Money on the Credit of the United States, to define and punish Crimes against the Law of Nations, and to punish Counterfeiting of Securities and current Coin.

Section 9. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; or enter into any Compact or Agreement with a foreign State; or send Ambassadors, or Consuls, or other public Ministers; or receive Ambassadors, or Consuls, or other public Ministers.

Section 11. The President shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.

Section 12. The President shall nominate, and, by and with the Advice and Consent of the Senate, shall appoint and dismiss Judges, Officers of the United States, and all civil Officers of the United States.

Section 13. The President shall have the Power to grant Reprieves and Pardons for all Crimes, except Treason, Bribery, and other Crimes against the United States.

Section 14. The President shall have the Power to fill up all Vacancies that may happen during the Absence of the President or the Disability of the President, by appointing such Persons as he may think proper, who shall hold Office until such Person be appointed by the Senate.

Section 15. The President shall have the Power to receive Ambassadors and other public Ministers.

Section 16. The President shall have the Power to grant Reprieves and Pardons for all Crimes, except Treason, Bribery, and other Crimes against the United States.

Section 17. The President shall have the Power to grant Reprieves and Pardons for all Crimes, except Treason, Bribery, and other Crimes against the United States.

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Section 25. The President shall have the Power to grant Reprieves and Pardons for all Crimes, except Treason, Bribery, and other Crimes against the United States.

**T**HE text of the Constitution is the fundamental law under which the government of the United States operates. Yet the vast majority of the American people seem to know very little about the federal Constitution. A few years ago, a public opinion poll showed that thirty-one per cent of American adults had never heard of the Bill of Rights; that another thirty-six per cent had heard of it but could not identify it; and that twelve per cent more gave incorrect versions of what it is. Thus seventy-nine per cent, or almost four out of five, of American adults were unable to identify the Bill of Rights correctly. When, in a later poll in Madison, Wisconsin, some Amer-

icans were asked to sign the Bill of Rights as evidence of subscribing to its principles, practically all refused, suspecting a subversive plot. The most charitable interpretation of these occurrences would be that people could not see the forest for the trees; in other words, they could not recognize as parts of the Constitution a few sentences whose import was technical.

The aim of this chapter is to familiarize the student with the text of the Constitution. Like other great works of the mind and spirit, the Constitution should be read like a love letter. It deserves a careful reading as it stands; all too many students have read *about* the Constitution without having had the experience of reading the document itself. As it is read, a number of its interesting features can be noted that would be puzzling if explained apart from the text. The facts noted are not necessarily the most important elements of the Constitution; they are simply those that highlight the form and exemplify the meanings and development of the Constitution.

In the following presentation, the text of the Constitution appears in the left-hand column, and observations about certain points in the text appear in the right-hand column. The left-hand column includes only those parts of the Constitution that are used today or that might, under changed conditions, be used in the future. The parts that have been invalidated by later Amendments have been placed in the right-hand column; for they no longer comprise elements in the fundamental law of the American national government. Certain other passages in the Constitution have become obsolete; these have been placed in the left-hand column, but the fact that they are inactive today has been noted in the right-hand column.

## CONSTITUTION OF THE UNITED STATES

We the people of the United States, 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 ourselves and our posterity, do ordain and establish this Constitution for the United States of America.<sup>1</sup>

### Article I<sup>2</sup>

#### 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.<sup>3</sup>

1. Introductory doctrine: *This introductory sentence is termed the Preamble. It is not strictly necessary to the Constitution. It comprises not law but doctrine. For example, it is never cited as authorization for a power exercised by any branch of the government. The ideas stated in the Preamble are consonant with the "enlightened" beliefs of the eighteenth century. Note the doctrine of the social compact in "We the people . . . do ordain and establish. . . ."*

2. How the Constitution is subdivided: *The principal divisions of the Constitution are the Articles, of which there are seven. Articles are subdivided into Sections, and Sections into clauses.*

3. Origins of law in the legislature: *Article I, it can be seen, is devoted to*

## Section 2

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

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

3. Representatives and direct taxes<sup>4</sup> shall be apportioned among the several States which may be included within this Union, according to their respective numbers. . . .<sup>5</sup> The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the States of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.<sup>6</sup>

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

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

*the legislative power. This arrangement reflects the belief of the time that policy-making is prior to policy-executing, and that policy is initiated by legislative bodies. Note that Article I is as long as the remaining six Articles combined.*

4. A provision inoperative since the Civil War: *The provision regarding direct taxes is more or less inoperative, since the national government does not levy direct taxes. See the Sixteenth Amendment.*

5. A clause eliminated: *Originally, ". . . which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." This is the famous "three-fifths compromise." It lapsed with the emancipation of the slaves, and was in part formally superseded by the Fourteenth Amendment.*

6. An example of legislative matter in the Constitution: *This provision for the size of the State delegations to the House is actually legislative rather than constitutional. That is, it is matter which, if only because it is not expected to be enduring, might be better fixed by a law passed by Congress than by a constitutional provision. However, it was essential for getting the new regime into motion.*

### Section 3

1. The Senate of the United States shall be composed of two senators from each State . . . ;<sup>7</sup> and each Senator shall have one vote.<sup>8</sup>

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; . . .<sup>9</sup>

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

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

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.<sup>10</sup>

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation.<sup>11</sup> When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

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

7. A changed phrase: Originally, ". . . chosen by the legislature thereof for six years. . . ." This phrase was superseded by the Seventeenth Amendment, which instituted direct popular election of Senators.

8. A confederative idea with a national bent: *That each State should have two Senators elected by the State legislature was an important concession to the principle of federalism. However, that each Senator should have one vote, rather than that each State should have one vote in the Senate, reveals the intention of the Founding Fathers that the Senate should be a truly national legislature and not a conclave of ambassadors from the States.*

9. Originally, ". . . and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies." This clause was also superseded by the Seventeenth Amendment.

10. The interlocking of parts: *Naturally, here, the authors had to recall that elsewhere they had provided for the Vice President's succession to the presidency, which would then leave a vacancy in the presidency of the Senate.*

11. Added procedure for unusual functions: *When acting as a court, the Senate adds new solemnity to its proceedings. Note elsewhere that when an organ does "double duty," it is somewhat changed. For instance, according to the Twelfth Amendment, the House, if it must choose the President, votes not as individuals but as States; another instance is the requirement that a congressional rejection of a veto must have a two-thirds majority (Art. I, sec. 7, cl. 2).*

judgment and punishment, according to law.

#### Section 4

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.<sup>12</sup>

2. . . .<sup>13</sup>

#### Section 5

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

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

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

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

#### Section 6

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained

12. A fine point for State independence: *The phrase, "except as to the places of choosing Senators," was inserted to prevent Congress from influencing the sites of State capitals, or perhaps from making the electors go to the national capital. This provision is meaningless today since the people, and not the State legislatures, elect Senators.*

A missing "ghost" clause: *In an early draft of the Constitution this clause was to be followed by one stating that "The legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said legislature shall seem expedient." Since the delegates to the Convention could not agree on this question, the clause was omitted entirely from the final draft of the Constitution. Several other such "ghost" clauses prowl the pages of the Constitution.*

13. An amendment produces an excision: *Originally, "The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." This clause was replaced by the Twentieth Amendment, section 2.*

by law, and paid out of the Treasury of the United States.<sup>14</sup> They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either House during his continuance in office.<sup>15</sup>

#### Section 7

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.<sup>16</sup>

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons

14. A fine point for nationalism: *The provision that the congressmen should be paid by the national government instead of by the States, as under the Articles of Confederation, indicated how the members of the Convention aimed at strengthening the power of the central government.*

15. A detail of the separation of powers: *The principle of the separation of powers is nowhere mentioned in the Constitution. However, the provisions of this clause definitely separate the personnel of the legislative branch from those of the other two branches.*

16. Altered meaning through practice: *The power to amend is almost as strong as the power to originate. But the colonial tradition made the authors desirous of putting money bills into the hands of the "popular" chamber, even though times were already changing the original reasons for the doctrine.*

voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.<sup>17</sup>

3. Every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.<sup>18</sup>

#### Section 8

1. The Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;<sup>19</sup>

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

5. To coin money, regulate the value thereof,<sup>20</sup> and of foreign coin, and fix the standard of weights and measures;

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

17. Omission of a famous word: *This lengthy clause describes the veto process, without once employing the word "veto."*

18. An omission of a form of law: *Although apparently intended to be comprehensive, this clause does not apply to concurrent resolutions, as opposed to joint resolutions (on pages 385 and 388).*

19. A vastly altered meaning: *This power was desired by the North and opposed by the South. The South permitted it only after securing the guarantees of its own interests found in Art. I, sec. 9, cl. 1 and 5. The meaning of "commerce" has greatly evolved since 1788. For more than a century most lawyers thought it meant "trade" and nothing more. Today it embraces "manufacturing" as well, thanks to Supreme Court decisions.*

20. A source of implied power: *Alexander Hamilton argued that from this authorization the power to establish a Bank of the United States could be implied. This was the first claim of an implied power.*

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

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

11. To declare war, grant letters of marque and reprisal,<sup>21</sup> and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation shall be for a longer term than two years;

13. To provide and maintain a navy;

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

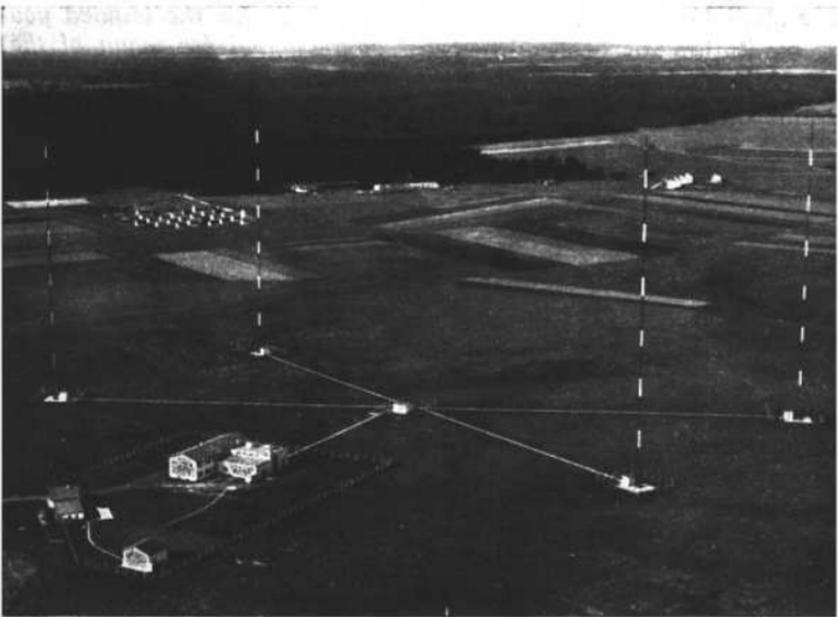
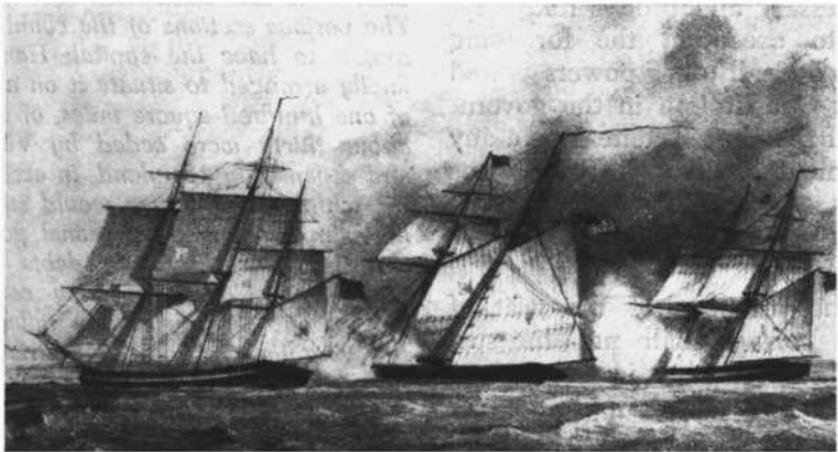
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrection and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;<sup>22</sup>

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arse-

21. An obsolete authority: *Letters of marque and reprisal are a commission given by a government to a private citizen to operate a merchant ship as a warship, or privateer, and to capture enemy property. Letters of marque and reprisal were renounced by the countries signing the Declaration of Paris of 1856. Although the United States was not a signatory of the Declaration, it has honored this prohibition. Hence this power is obsolete. In any event, modern technology has made warships so greatly different from merchant vessels that fitting out a privateer to compete with present-day warships would be a rather vain effort (see Figure 12).*

22. A joint national-State function: *The small amount of power left to the States with respect to the militia shows the influence of Federalist theory.*



Transmitter photo by courtesy of Radio Free Europe

**Figure 12. Privateers, Ancient and Contemporary. Battle between the Schooner *Dolphin*, the British Ship *Hebe*, and a Brig, off Cape Vincent, Jan. 25, 1813; Radio Free Europe 135 Kilowatt Medium-Wave Transmitter in Holzkirchen, Germany.** When America had a small navy and warships were not costly, the government issued licenses (called letters of marque and reprisal) to private ships to wage war on the high seas. The Constitution authorizes the power. Today a new form of private cold war is possible; private groups, with government blessing, attack Communism by radio and other means of communication. The Constitution did not foresee this modern mode of international conflict, but authority for the activity has not been questioned.

nals, dockyards, and other needful buildings;<sup>23</sup> and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.<sup>24</sup>

### Section 9<sup>25</sup>

1. . . .<sup>26</sup>

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

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

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.<sup>27</sup>

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

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

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

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

### Section 10<sup>28</sup>

1. No State shall enter into any treaty, alliance, or confederation;

23. This clause simply empowers Congress to govern the capital city of the United States. It should be noted that no precise location is given here. The various sections of the country all sought to have the capital; Hamilton finally arranged to situate it on a tract of one hundred square miles, of which about thirty were ceded by Virginia and seventy by Maryland, in exchange for which those States would support his plan to have the national government assume the State debts. The District of Columbia today contains only about seventy square miles; for the Virginia part of the District was retroceded in 1846.

24. A clause enlarging the previously-enumerated powers: This is the "necessary and proper" clause, which is the basis for the implied powers of Congress, and for many of the great debates following ratification of the Constitution.

25. Guards against old abuses: Section 9 includes several important limitations on the powers of Congress. Some of these limitations show what the Founding Fathers thought had been abuses in English rule; others are associated with some of the compromises necessary to secure acceptance of the Constitution at the Philadelphia Convention.

26. A self-terminating clause: Originally, "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." This clause merely forbids Congress to prohibit the slave trade until 1808. Obviously, the clause is self-repealing.

27. A clause modified by amendment: This clause has been modified, although not repealed, by the Sixteenth Amendment.

28. Some reactions against Confederation experience: Section 10 includes a number of prohibitions on the States. These prohibitions show what the Founding Fathers believed were the

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

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

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

## Article II<sup>29</sup>

### Section 1

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

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector. . . .<sup>30</sup>

*weaknesses of the government under the Articles of Confederation. These prohibitions are clearly associated with the powers extended to Congress; hence they were placed in Article I.*

29. The logic of Articles I, II and III: Article II describes the executive branch of the government. The logic here was that the executive branch did not frame policy and that its work followed that of Congress. Note that Article III then fittingly treats of the judiciary, which comes into action only after a law has been enacted and enforced.

30. The first mode of presidential election: Originally, "The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in

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

4. No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution,<sup>31</sup> shall be eligible to the office of President; neither shall any person be eligible who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and the Vice President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.<sup>32</sup>

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

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

*the presence of the Senate and the House of Representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President."* This passage was superseded by the Twelfth Amendment, which gave the Electors separate votes for the President and the Vice President. That the House should choose the President in case the Electoral College was unable to do so was another concession to the notion of federalism; it was perpetuated, in somewhat altered form, in the Twelfth Amendment.

31. An interim provision: *It has been many years since there was any living person who was a citizen in 1788; hence this provision is obsolete.*

32. A murky clause, clarified by amendment: *The succession to the presidency has been clarified by the Twentieth Amendment.*

## Section 2

1. The President shall be Commander-in-Chief of the army and navy of the United States, and of

the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive Departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

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

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

#### Section 3<sup>33</sup>

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient;<sup>34</sup> he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper;<sup>35</sup> he shall receive ambassadors and other public

33. A catch-all section: *Section 3 contains a hodge-podge of presidential powers, dealing with his legislative functions, his executive duties, and his role in the conduct of foreign relations. Oddly enough, the greatest of all presidential legislative powers—the veto—is described in Section 7 of Article I, which is supposedly devoted to Congress.*

34. Source of an annual practice: *This clause authorizes the "State of the Union" message delivered at the opening of a congressional session each January.*

35. An unused power: *This authority has never been used because the House and Senate have always agreed on a date for adjournment.*

ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.<sup>36</sup>

#### Section 4

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### Article III

#### Section 1

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

#### Section 2

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority:—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;<sup>37</sup>—between citizens of different States—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassa-

36. Imitation of State constitutions: For example, the New York Constitution of 1777 declared "that it shall be the duty of the governor to inform the legislature, at every session, of the condition of the state, so far as may respect his department; to recommend such matters to their consideration as shall appear to him to concern its good government, welfare, and prosperity; . . . to take care that the laws are faithfully executed to the best of his ability; . . ."

37. A limiting of meaning by amendment: This power is limited by the Eleventh Amendment, which denies the federal courts jurisdiction in cases in which a citizen of one State sues another State.

5. Can you think of any kinds of political activity that were left out of the test reported in the text? If so, do you believe that including it or them would change the total pattern of activity? Explain your answer.

6. What differences of trait and behavior distinguish the active from the inactive citizens, as groupings?

munities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.<sup>41</sup>

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.<sup>42</sup>

### Section 3

1. New States may be admitted by the Congress into this Union;<sup>43</sup> but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.<sup>44</sup>

### Section 4

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

41. A clause interpreted in favor of State authority: *This clause, which deals with the practice known as rendition or extradition, does not have compulsory power over State governors.*

42. A special, detailed guarantee to the slave-owners: *This clause was designed for the benefit of the slave-owning interests. It authorizes the owner of a fugitive slave to procure, in his home State, a warrant for the arrest of the slave, then pursue him into a free State where police officers according to the "full faith and credit" clause must respect the warrant and assist in capturing the fugitive. Of course, the clause became obsolete with the end of slavery.*

43. A deliberate vagueness: *This clause was written so as to be deliberately vague; for it says nothing as to whether the new States shall be constitutionally and legally the equals of the original States. This ambiguity was introduced primarily at the urging of Gouverneur Morris, who feared lest the West secure political equality with the East.*

44. An evasion of an existing feud between the national government and the States: *Some States still claimed lands in the West.*

## Article V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article;<sup>45</sup> and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.<sup>46</sup>

## Article VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.<sup>47</sup>

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.<sup>48</sup>

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and the several States, shall be

45. Another obsolete clause: *This proviso is an additional safeguard for the South that there would be no interference with the slave trade. It is, of course, inoperative now.*

46. A case of absolute State veto power: *This is an exceptional guarantee for the small States.*

47. A reassurance to financial interests: *This clause is an assurance to the holders of bonds issued by the Confederation.*

48. The federal supremacy clause: *This clause, which was borrowed from the New Jersey Plan, is sometimes called "the keystone of the Constitution," since it establishes the supremacy of the federal government over the States.*

bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

### Article VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.<sup>49</sup>

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

### AMENDMENTS<sup>50</sup>

#### First Amendment<sup>51</sup>

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### Second Amendment

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.<sup>52</sup>

#### Third Amendment

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time

49. A daring violation of instructions: *This was a revolutionary Article; for amendment of the Articles of Confederation—presumably the task of the Philadelphia Convention—required unanimous consent of the States.*

50. Amendments properly termed Articles: *Officially the Amendments are termed "Articles" and are numbered as Article I, Article II, and so on. Since this procedure leads to duplication with the body of the Constitution, this text will employ the term "amendment."*

51. The Bill of Rights: *The first ten Amendments are known as the Bill of Rights. They were adopted on December 15, 1791. They were designed to prevent arbitrary actions of the government, some of which had been experienced under British rule. It should be noted that apart from the guarantees of judicial rights these Amendments are negative, as contrasted with the United Nations Declaration of Human Rights.*

52. A diminished popular power: *This Amendment has lost its original significance. It was adopted by a nation that abhorred professional, mercenary armies and held up the citizen-soldier as the military ideal. In this respect, Americans of this era sought to emulate what they believed were the antique virtues of the Roman Republic. George Washington was compared with the Roman Cincinnatus, who according to tradition left his plow to command an army.*

of war, but in a manner to be prescribed by law.<sup>53</sup>

#### **Fourth Amendment**

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.<sup>54</sup>

#### **Fifth Amendment**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;<sup>55</sup> nor shall private property be taken for public use without just compensation.

#### **Sixth Amendment**

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

53. The banning, perhaps unnecessary, of an old abuse: *Colonial Americans had been enraged by the English habit of quartering soldiers in their homes without previous consultation. Since troops have their own billets today, this protection is unused.*

54. Imitation by a would-be State: *The Hawaiian territory in its proposed State constitution copies this Amendment word for word, with minor changes in punctuation, but places it in the first article with most other parts of the federal Bill of Rights.*

55. Due process, number I: *The due process guarantee is repeated in the Fourteenth Amendment, which enforces it upon State courts.*

### ***Seventh Amendment***

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of common law.

### ***Eighth Amendment***

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

### ***Ninth Amendment***

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.<sup>56</sup>

### ***Tenth Amendment***

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>57</sup>

### ***Eleventh Amendment***

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.<sup>58</sup>

### ***Twelfth Amendment***

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as Pres-

56. Preventing unforeseen oppression: *This Amendment means that there may be or are other rights that are not named in the Constitution.*

57. An attempt to restrict the national government: *This Amendment is important in that it distinguishes between the delegated powers of the national government and the reserved powers of the State governments.*

58. An uprising by States-rightists: *This Amendment was adopted on January 8, 1798. It shows the will of the States to retain as much as possible of their sovereignty.*

ident, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them . . .<sup>59</sup> then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-

59. An amended Amendment: Originally, "before the fourth day of March next following. . . ." This phrase has been superseded by the Twentieth Amendment.

thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.<sup>60</sup>

### *Thirteenth Amendment*

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

2. Congress shall have power to enforce this article by appropriate legislation.<sup>61</sup>

### *Fourteenth Amendment*

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 equal protection of the laws.<sup>62</sup>

2. Representation 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

60. Qualifications of the Vice President: *This Amendment was adopted on September 25, 1804. It was aimed at preventing another situation akin to that which arose in 1800, when Thomas Jefferson and Aaron Burr received equal numbers of votes from the Electoral College. This Amendment also filled a gap in the Constitution by fixing the qualifications for the Vice President.*

61. A need for enforcement realized: *This Amendment was adopted on December 18, 1865. The second clause is noteworthy; it shows the recognition of the fact that an Amendment standing by itself has no force, and that it can be executed only by the normal processes of law.*

62. Due process, number II: *These provisions were intended to override the Dred Scott decision of the Supreme Court, in which it was held that a slave could not be a citizen and was not authorized to sue any other person in court, i.e., was not entitled to equal protection of the laws. The new "due process" usage has become of great importance in many ways.*

way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.<sup>63</sup>

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.<sup>64</sup>

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 slaves; but all such debts, obligations, and claims shall be held illegal and void.<sup>65</sup>

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.<sup>66</sup>

## **Fifteenth Amendment**

### **Section 1**

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by

63. An unenforced clause: *This clause has never been enforced, since it would outrage many interests and also prevent literacy tests for voting. It should be noted that it assumes the popular election of the Electoral College. This provision is a sizable interference with the powers of the States, for it (a) sets the highest minimum age that any state may require of voters, and (b) concerns itself with State elections.*

64. Retaliation against Confederate leaders: *This provision was intended to disqualify leaders of the Confederacy from holding political office.*

65. More retaliation: *The first clause of this provision was an assurance to the financial interests holding bonds of the national government that the government would honor its obligations. The second clause annulled the bonds of the Confederacy. The latter clause also admitted that liberation of the slaves had its monetary side; in fact, emancipation cost southern slave-owners about four billion dollars—the market value of their slaves.*

66. The Union centralized: *The Fourteenth Amendment was adopted on July 28, 1868. It breathed the spirit of northern revenge toward the South; in fact, southern States had to ratify this Amendment before they could be readmitted to the Union. It also shows the trend toward strengthening the national government with respect to the States.*

any State on account of race, color, or previous condition of servitude.

## Section 2

The Congress shall have power to enforce this article by appropriate legislation.<sup>67</sup>

### *Sixteenth Amendment*

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.<sup>68</sup>

### *Seventeenth Amendment*

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This Amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.<sup>69</sup>

### *Eighteenth Amendment*

.. .<sup>70</sup>

### *Nineteenth Amendment*

The right of citizens of the United States to vote shall not be denied

67. A limit on State controls over the right to vote: *This Amendment as adopted on March 30, 1870. Southern States were also required to ratify it. Presumably it only empowered the Negroes to vote. It also was one phase of a Republican Party plan to secure dominance over the whole country; for Republican leaders expected that the Negroes would vote Republican, giving that party control in the South.*

68. A reversal of a Supreme Court decision by amendment: *This Amendment was adopted on February 25, 1913. It was designed to override a Supreme Court decision which had held that an income tax was a direct tax and must therefore be apportioned among the States according to population.*

69. An endorsement of a growing State practice: *This Amendment was adopted on May 31, 1913. It simply arranged for the direct, popular election of United States Senators. This practice existed in effect in many States; more than half the State legislatures had to choose a Senator from among candidates who had been named by the people in primary elections.*

70. The Prohibition Amendment, since repealed: *Originally, "After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the states by Congress." The Eighteenth Amendment was adopted on January 29, 1919. It was repealed in 1933 by the Twenty-first Amendment. This was the first Amendment to include a time limit for ratification.*

or abridged by the United States or by any State on account of sex.

The Congress shall have power by appropriate legislation to enforce the provisions of this article.<sup>71</sup>

## *Twentieth Amendment*

### *Section 1*

The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.<sup>72</sup>

### *Section 2*

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

### *Section 3*

If, at the time fixed for the beginning of the term of the President, the President-elect shall have died,<sup>73</sup> the Vice President-elect shall become President.<sup>74</sup> If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

71. The women's suffrage Amendment: This Amendment was adopted on August 26, 1920.

72. The "Lame Duck" Amendment: The purpose of this section was to end the so-called "lame duck" sessions of Congress, i.e., those sessions that met after a November election and contained numerous members who had been voted out of office. The section also had the aim of shortening the interval between elections and the seating of federal officers.

73. Adherence to the original literary style: Note the persistent use of the future perfect tense, probably in imitation of the earlier parts of the Constitution since this tense is archaic today.

74. A formal designation of the succession: This section provides that the Vice President shall, under certain conditions, "become" President. It is nowhere stated in the Constitution that if a President dies in office, the Vice President shall "become" President; it is provided only that the powers and duties of the office shall "devolve" upon the Vice President. However, the Vice President does function as President, whatever his constitutional status.

#### **Section 4**

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice may have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

#### **Section 5**

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

#### **Section 6**

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.<sup>75</sup>

*75. This Amendment was adopted on February 6, 1933.*

### ***Twenty-first Amendment***

#### **Section 1**

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

#### **Section 2**

The transportation or importation into any State, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.<sup>76</sup>

*76. Federal aid in enforcing State criminal law: In other words, the federal government uses its powers over interstate commerce to assist States with local prohibition laws.*

#### **Section 3**

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.<sup>77</sup>

*77. Ratification by conventions: This Amendment was adopted on December 5, 1933. It is the only Amendment to be ratified by conventions rather than State legislatures.*

## Twenty-second Amendment

### Section 1

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.<sup>78</sup>

### Section 2

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.<sup>79</sup>

78. A courtesy to the incumbent: *The second sentence of this Section is probably already obsolete, with the decision of Harry Truman not to be a candidate in 1952 or 1956 and with the speedy adoption of the Amendment.*

79. *This Amendment was adopted on February 27, 1951.*

## QUESTIONS AND PROBLEMS

1. Where is the doctrine of the social compact to be noticed in the Constitution? Can you explain its presence and its position?
2. Outline in topical form the general structure of the Constitution.
3. Cite two examples of obsolete statements in the Constitution.
4. Cite an example from the Constitution of matter that is ordinarily regarded as "legislative" in character.
5. Cite and describe each place in the Constitution that sets up or presumes the equality of the States.
6. Cite three provisions of the Constitution that change the nature or mode of operation of an office or an agency when a special task is placed upon it.
7. Cite a "ghost clause" of the Constitution and two examples of deliberate vagueness. Explain each instance.
8. It is often stated that the Constitution must be understood to be a "political" document, as well as a "philosophical" document. Cite examples of provisions supporting each view.
9. Name three famous terms used to describe the structure and operation of government that are not mentioned in the Constitution.
10. What specific abuses of power seemed to trouble the Philadelphia conven-

tion; which others seemed to trouble the ratifying conventions and First Congress? Do the differences between the two types have any philosophical meaning?

11. Cite an instance in which the Constitution imitates a State constitution.
12. The Constitution gives guarantees to property in general. Does it guarantee any specific property from confiscation or damage?
13. Where does the term "due process" occur in the Constitution?
14. Name an unenforced clause of the Constitution.
15. What was the first amendment to include a time limit on its ratification?
16. Cite two instances in which the federal government is charged by the Constitution with assisting State governments or helping them enforce their laws.