

# The Constitution of The United States of America

The Essential Character of a Federal Govt

~~I think that I am correctly stating~~ The purport of the previous lectures which have been delivered in this course, ~~when I say that they have~~ been devoted to tracing the evolution of Federalism in ~~from~~ the application of the principles of representative Government and national unity to a number of communities having separate political distinct, ~~and separately organised, political societies organisations;~~ and the task which ~~And the task~~ which devolves upon me tonight is to briefly exhibit the manner in which the application of these principles has been accomplished in the case of the federal union

of the United States of America — The essential character of a federal government necessitates a written or pre-appointed form of political organisation, but all federal constitutions that have endured and proved capable of performing the functions for which they were established have been evolved from existing institutions and have not been manufactured in accordance with abstract political theories — The constitution of the United States is contained in a document that is less than 120 years old; but its fundamental provisions are adaptations and combinations of institutions, principles and usages with which the English colonists

on the American continent had been familiar for more than 200 years before the document was drafted. Its fundamental purpose was to make all the members of thirteen separate and self-governing societies occupying contiguous territories into one people in all their commercial intercourse with each other, and in all their commercial and political intercourse with other nations of the world, ~~but~~ and at the same time, to preserve and continue the separate political ~~and continue their separate political organisations~~ existence of each of the united societies as fully as would be compatible with their unity in commerce and in international transactions.

The political machinery established by the Constitution, whether for the performance of

legislative or executive or judicial functions, was erected solely for accomplishing that dual purpose in as complete and effectual a manner as the existing conditions permitted it to be done; And the particular subject for our investigation tonight is the nature of the duplex citizenship which the federal constitution created in the members of the several communities which it erected into one nation ~~and~~ <sup>but</sup> which it at the same time preserved and continued as so many distinct and separately organised societies. <sup>[The ~~former~~ <sup>original</sup> ~~of~~ <sup>the</sup> ~~United States of America~~ <sup>Constitution</sup>]</sup> **At** the close of the war which secured the independence of the original thirteen colonies of Great Britain which had given to themselves

the title of "The United States of America", each of them was perfectly independent of all the others in all its internal affairs, and there was not any central power in existence which had, in the full and proper meaning of the words, legislative authority over any two or more of them. They had formed themselves into what they described as a perpetual Union, under articles of confederation, which provided for the election of delegates from each ~~colony~~ <sup>State</sup> to a central congress, upon which was conferred the sole power of levying and carrying on war, and of establishing postal communication between them <sup>States</sup>; and the articles of confederation

declared that the free citizens of each state were to be entitled to all the privileges and immunities of free citizens in all the other states. But the central congress had not power to levy any tax, and was totally dependent for its revenue upon the contributions provided by the separate legislatures of the thirteen states, and was equally dependent upon the executive and judicial authorities of the separate states to enforce any of its resolutions or ordinances.

The central congress had contracted a debt for the purpose of carrying on the war of Independence, and the several states that had laid claim to the possession of territory beyond their ~~original~~ western boundaries, had ceded it to the confederation.

<sup>territorial possession</sup>  
- a common ~~territory~~ and a common debt.

These two facts, constituted the only substantial bonds of Union between the original thirteen colonies during the period that elapsed between the acknowledgment of their independence by Great Britain, and the subsequent adoption by them of the Federal Constitution, which ~~afforded~~ transformed them into a nation. In that intervening period, many of the States imposed duties on the goods imported from the other States, and they were constantly quarrelling about their respective boundary lines, and their respective rights of navigation of the Rivers that flowed through or alongside the Territory of any two or more of them. It is manifest that such a



condition of things was highly detrimental to the development of profitable commercial intercourse between them, and to the growth and prosperity of the separate industrial interests of each of them; and in the absence of any restraining power, or common tribunal for the determination of their grievances against one another, several of them were repeatedly at the verge of actual warfare with each other. In this position of affairs, Washington became president of a company which was established for the purpose of extending the navigation of the Potomac and James Rivers, and, in order to effect that object, it was necessary to secure a joint action on the part



of the States of Virginia, Maryland and Pennsylvania. For this purpose a meeting of a number of the principal men in Virginia was held at Washington's house at Mount Vernon, and shortly afterwards the Legislatures of Maryland and Virginia agreed to the proposals suggested at that meeting. But the Report of the Legislature of Maryland upon the subject, went on to recommend, that all the other States should be invited to consider proposals for the better regulation of commercial intercourse among them, and the result of that suggestion was the election of the convention that framed the Federal constitution.

[The Primary Objects of Union]

We have therefore, this interesting and important

fact presented to us for consideration and instruction, that it was not primarily for what we usually called political reasons, that the United States of America, were led to unite themselves into a nation under one central Government, but that it was primarily for the purpose of obtaining, and securing more favorable conditions for the development of their material resources, and the increase of their industrial and commercial prosperity. This fact was clearly recognised, and emphatically asserted, by the great American Statesman and Jurist, Daniel Webster, in several of his most important public speeches, in the Supreme Court, and in Congress, among which

I may mention his famous argument in the case of Gibbons v Ogden in which the question involved was the constitutional validity of an Act of the State of New York which purported to grant to certain persons the exclusive right to navigate the rivers of that State with vessels propelled by steam - "Few things, said he, are better known than the immediate causes which led to the adoption of the present constitution, and there is nothing, I think, clearer than that the prevailing motive was to regulate commerce, to rescue it from the embarrassing and destructive consequences resulting from the legislation of so many different States, and to

" place it under the protection of uniform law."

Again in his great speech in the Senate, on the institution of the sub-treasury, he said, " Sir!

" whatever we may think of it now, the constitution

" had its immediate origin in the conviction of the

" necessity for uniformity or identity in commercial

" regulations. The whole history of the country,

" of every year, and every month, from the close of

" the war of the Revolution to the <sup>inauguration</sup> ~~adoption~~ of the

" constitution in 1879, proves this. Over whatever

" other interests it was made to extend, and

" whatever other blessings it now confers, or hereafter

" may confer, on the millions of free citizens who

" do, or shall, live under its protection, even

" though in time to come it should raise a pyramid  
" of power and grandeur, whose apex should look  
" down on the loftiest political structures of other  
" nations; and other ages, it will yet be true  
" that it was itself the child of commercial  
" necessity - Unity and identity of Commerce  
" among all the States was its seminal principle.  
" It had been found absolutely impossible to excite  
" or foster enterprise in trade under the influence  
" of discordant and jarring State regulations."

[Peculiar & Distinguishing Characteristics]

This important fact in connection with the  
of the United States  
origin of the constitution, provides an explanation  
of its peculiar and distinguishing characteristics  
as compared with the constitutions of Unitary

States, and also as compared with other Federal constitutions, that were framed amid other conditions and for other purposes. <sup>begin reprint</sup> The Government established by the Constitution of the United States is a Government of strictly limited powers, or, in other words, a Government which is confined, in the exercise of its legislative executive and judicial functions, to a limited and specifically mentioned number of subjects. These are all set out in the eighth section of the second article of the Constitution, and every other article, and section of the ~~Constitution~~ <sup>document</sup> is limited to the purpose of providing the necessary legislative, executive and judicial, machinery to enable the Federal Government

to exercise the powers conferred upon it by the second article. The first section of the first article of the Constitution declares that all legislative powers granted by the Constitution shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives; and the subjects enumerated in the eighth section of the second article, are those over which Congress is declared to have full and exclusive legislative power.

Among them are found many matters in regard to which every Government that regulates the conduct and mutual relations of the members of an organized community must necessarily have legislative authority, such as the power to raise a Revenue, and



provide an Army and a Navy for the defence of the nation against the attacks of an enemy.

But the central and most important subject placed under the full and exclusive jurisdiction of Congress, is the regulation of commerce with foreign nations, and among the ~~the~~ <sup>several</sup> States; and all the other matters placed by the Constitution under the jurisdiction of Congress will be found upon investigation to have a more or less intimate connection with that central subject. If Congress is to have the exclusive power of regulating commerce with foreign nations, it is necessary that it should have power to make laws for the control of vessels engaged in that commerce. Hence it must have jurisdiction

over all maritime questions. It must also have power to raise a Navy for the protection of ~~the~~ <sup>that commerce</sup> ~~ships~~, and the power of establishing courts for the settlement of disputes arising out of ~~the~~ maritime trade, and the punishment of maritime offences. And if Congress is to effectually regulate the commerce between the States, as well as the commerce with foreign nations, and to have exclusive jurisdiction over those subjects, it must have power to coin money and regulate the currency. For the same reason, it must have the power of establishing, and regulating,

postal communication between the States, ~~and~~

~~For~~ ~~and~~ ~~for~~ ~~the~~ same reason also the separate States may ~~therefore~~ be ~~legally~~ ~~stated~~ that the ~~must~~ ~~be~~ ~~deprived~~ ~~of~~ the power <sup>to coin money or</sup> to lay any legislative powers granted by the Constitution to ~~impose~~ ~~on~~ ~~imports~~ ~~or~~ ~~exports~~ <sup>imports</sup> or exports

without the authority of Congress. ~~Accordingly~~ we find all these powers expressly granted to Congress by the Constitution, and ~~expressly~~ <sup>expressly</sup> either expressly or impliedly ~~deposited~~ <sup>deposited</sup> to the separate States, and it may be broadly stated that all the powers granted to Congress and denied to the inter-state commerce, and the regulation of all separate States are those powers which are necessary for the full and exclusive regulation of external and internal commerce, or ancillary to it. But in the primitive condition of society in which civil government has its origin, trade and commerce, as we understand kinds of commerce or ancillary to them. But in the words at the present time, can hardly be the primitive condition of society in which civil government has its origin, trade and commerce as we understand the words at the present time can hardly be said to exist, and the fundamental purposes for which unitary governments have been established, and continue to exist, are the protection of the life and property, and the freedom of action of the unitary governments have been established and

continue to exist are the protection of the life and property and the freedom of action of all the separate members of the community. We know that

the American Declaration of Independence asserts that all men are endowed by their Creator with certain inalienable rights among which are life, liberty, and the pursuit of happiness, and that to secure these rights Governments are instituted amongst men; and all the modern writers on the origin and function of Government, whether they accept or reject the doctrine of the natural rights of men, are agreed that the primary purpose of Government is to secure for each individual member of society protection for his life, his person, and his property.

But among the powers granted to the American Congress by the Constitution of the United States,

There is not one which authorises Congress to pass any law which has for its object the protection of the lives, property, or the personal freedom of the citizens of any state of the American Nation. There is power given to Congress to make laws for this purpose in regard to the inhabitants of the District of Columbia, but that District is not one of the States of the Union, and it has not any separate local legislature. The sole object of the creation of that District was to provide a piece of territory outside of the jurisdiction of any State for the purpose of erecting a city for the seat of the Federal Government, and it was necessary to provide a

complete system of Government for the persons who would reside there. This was done by giving Congress the power to make laws upon all subjects for that District. Congress is also invested with power to make laws for the Government of all territories belonging to the United States, and not within the boundary or jurisdiction of any one of the States. With these exceptions, the Constitution does not confer upon Congress the power to make any law primarily designed for the protection of the ~~life~~, or personal liberty, or property, of any person under its jurisdiction, or to legislate in reference to any of the questions which arise out of the personal and contractual relations of



individuals. This fact demonstrates, beyond all question, that the Federal Government established by the Constitution of the United States was not created for the fulfillment of those primary functions for which Governments are admitted to be originally instituted amongst men, but for certain additive and supplementary purposes which required a special form of political organisation for their accomplishment. But at this point the question naturally suggests itself as to what power exists, and what provision is made, in the United States for the performance of the fundamental functions of Government for the inhabitants of the several States; or in other words, to what power or authority



can the citizens of each separate state appeal for the protection of their persons, and property and liberty in the course of <sup>their</sup> daily transactions? The Answer is that the inhabitants of each state, while they reside there, are under the jurisdiction and protection of a Government which is distinctly separate from the Government established by the <sup>Federal</sup> Constitution, and which in regard to all matters not placed by the Constitution under the jurisdiction of that Government, is perfectly independent of its control or interference. It is this Government which makes the primary provision for the protection of the life, liberty and property of every person resident within its jurisdiction, and which

makes laws, and establishes courts of its own, for the accomplishment of that object. Each State has such a local Government, and the laws which enable the residents of any State to enforce the fulfillment of the contracts which they make with other residents of the same State as well as all laws which regulate the ~~domestic~~ <sup>domestic</sup> ~~conjugal~~ and ~~parental~~ relations of the residents of each State, and the laws which provide for the punishment of crimes against their person or properties, are all made by the separate legislatures of the several States, and enforced by courts established by those legislatures for that purpose; and it has been well said,

that a citizen of any one of the States may go through a long life and never come into contact with the Federal Government, or be in any way reminded of its existence, except when he exercises his right to vote for a member of Congress, or a presidential elector, or sees a building which has been erected by the Federal Government, and which has the national flag flying over it. But immediately a citizen of New York enters into a commercial contract with a citizen of Massachusetts, or Virginia, and a dispute arises between them in regard to its terms, ~~and~~ <sup>or</sup> their respective rights and obligations under it, both parties are reminded that, while

they are ~~respectively~~ <sup>severally</sup> citizens of their respective States,  
they are also both citizens of the common  
country of the United States, and that a  
Federal Court exists for the determination of  
the controversy between them. / <sup>B begins</sup> So also, if a  
citizen of Virginia, or New York, travels to  
Europe, or Asia, and is in any manner  
molested by the ~~subjects, or officials~~ <sup>government or people</sup> of the  
foreign country in which he is travelling his  
appeal for protection and redress is not made  
to the Government of his own state which  
protects him when he is at home in the  
exercise of his ordinary legal rights, but is  
made to the Federal Government at Washington,

and that Government, if it shall be necessary to do so, will display and use all its naval and military forces for his safety. This protection of the citizen against the aggression of a foreign state is not extended to him by virtue of any special power expressly conferred upon the Federal Government by the Constitution, but in virtue of the fact that he is a citizen of the United States and as such he is entitled to their care and protection whenever an injury is inflicted on him in violation of the principle of international comity. <sup>B ends</sup> But although the Constitution does not empower Congress to make any law for the prevention or redress

of any offence committed by a private individual against the person or property of another private individual within the jurisdiction of a state, it contains several explicit provisions against any arbitrary and tyrannical interference on the part of the legislature or the executive branch of the Government of any state with the life or liberty or property of any person within its jurisdiction. It also contains similar provisions for the protection of the life, liberty, and property of the individual against any arbitrary and oppressive interference on the part of the Federal Government or Congress.

The majority of these provisions have been

added as amendments to the original constitution and they have been frequently described as the American Declaration of Rights. Some of them are very similar to several of the provisions of the Great Charter of England and others ~~are~~ identical in purport and language with some of the provisions of the Bill of Rights which followed the English Revolution of 1688. The insertion of these provisions in the Constitution ~~of the United States~~ was due to a very large extent to the prevalence among the American people of the doctrine of the natural rights of man which dominated the political thought of the eighteenth century and which finds explicit



expression in the Declaration of Independence. / <sup>C</sup> at a  
subsequent ~~stage~~ <sup>stage</sup> of our inquiry we shall see that  
these amendments have become very important portions  
of the Constitution. — <sup>C ends</sup> /

The most difficult problem that confronted  
the framers of the Constitution of the United States  
and the one which provoked the most prolonged  
and acrimonious debates in the Convention was  
the proper application of the principles of representative  
Government to a federation of states of unequal  
territories and populations but claiming equality of  
rank and political power in the union. The  
satisfactory solution of this problem required the  
erection of a legislature which would secure

in its composition a representation of the several states upon the basis of equality in rank and equal participation in legislative power as well as a representation of the people of all the states in their collective character as citizens of the <sup>same nation,</sup> ~~the~~ federation. This was accomplished by the division of Congress into two branches, the smaller of which is called the Senate and is composed of two representatives elected by the legislature of each state for a term of six years and the larger branch of which is called the House of Representatives ~~which~~ <sup>and</sup> is composed of members chosen by the people of the several states for a term of two years in the proportion of one member for every thirty thousand of the

population of the state. It was also provided that the Senate should be a perpetual body whereof one third of the members should be renewed every second year, while the House of Representatives should be totally renewed at the end of every two years. In this manner the Constitution secures a separate and equal representation of each state in Congress and a collective representation of all the people in every state as the constituents of one nation. It was also provided that the consent of the Senate should be required to all treaties made with other nations and to the appointment of all Ambassadors, Consuls, Judges of the Supreme Court and other officers and

agents of the Federal Government whose appointment was not otherwise provided for. ~~By virtue of this provision was not otherwise provided for. And to secure each state secures a direct and equal participation perpetually the equal representation of each state in executive as well as legislative power; and to in the Senate, the Constitution contains a~~ secure perpetually the equal representation of each state ~~special provision that no amendment of it in the Senate the Constitution contains a special provision shall be made by which any state shall be that no amendment of it shall be made by which any state~~ deprived of its equal representation in the Senate without its own consent. The consent ~~Senate without its own consent~~ of a majority of ~~the States~~ three fourths of all the States is also required. ~~At the time the Constitution of the~~ to any amendment whatever of the Constitution.

~~United States was devised the generally received~~

At the time that the Constitution of the United States was devised ~~it~~ the generally received opinion among students and expounders of political science in both Europe and America among students & expounders of political science in Europe & America was that the full protection of the political and personal rights of the citizen was dependent

upon the proper distribution of the legislative, executive and judicial functions among separate and distinct branches of the government of a country. This doctrine had been first distinctly formulated by the great French jurist, Montesquieu, and had been repeated by Blackstone, and other writers upon English law and political science. In accordance with this theory, the framers of the American Constitution provided that the executive functions of the Federal Government should be vested in a president who should be independent of Congress for the tenure of his office ~~who~~ <sup>and who</sup> should be chosen by electors specially elected by the people for that purpose, but ~~who~~ <sup>that</sup>

he should be removable from office on impeachment and conviction of treason, or other high crimes or misdemeanors. The president was also made Commander-in-chief of the Army and Navy, and was empowered to appoint, with the consent of the Senate, all the officers of the Federal Government. He was also endowed with the power of granting reprieves and pardons for offences against the laws of the United States, and was invested with a power to veto all acts of Congress until they were passed by a majority of two thirds in both branches. The whole of the legislative power created by the Constitution, is granted to Congress.

subject to the suspensive veto of the president,  
and the Constitution provides that the judicial  
power of the United States shall be vested in  
one Supreme Court, and in such inferior Courts  
as Congress may, from time to time, establish,  
and the Judges of both the Supreme and  
inferior Courts, are invested with their offices  
during good behaviour, which means during  
life, unless they are removed on impeachment  
and conviction of any offence. The jurisdiction  
of the Supreme Court and of all other Federal  
Courts is strictly limited like the jurisdiction  
of Congress to the subjects enumerated in the  
Constitution, and a subsequent amendment



of the Constitution provided that the judicial power of the United States should not be construed to extend to any suit in law or in equity, commenced and prosecuted against one of the United States, by a citizen of another State, or by citizens or subjects of any foreign State. The object of this amendment is to prevent the federal government from assuming jurisdiction in any dispute between a state and a private person. In all such cases the private person must be content with the remedy provided by the state itself and if the state does not provide a remedy the private person is without redress, which is the position always occupied by every private individual

in relation to all sovereign and independent states.

The subjects over which the Supreme Court has jurisdiction are all federal in their character and connection, and there is no appeal from the decision of the Supreme Court of any separate state to the Supreme Court of the United States, on any case arising between two citizens of the same state, under the local law of that state except in those cases in which the local law is contrary to the constitution or to an act of Congress made under the authority of the constitution. In all other cases, the decision of the Supreme Court of the state upon a case arising under the local

law is final ; But if the parties to any case, tried in one of the State Courts, are citizens of different States, either of them may have the case brought, or removed, into a Federal Court, and from all Federal Courts there is an appeal to the Supreme Court.

I have asserted that the essential character, and requisite conditions of a Federal Government necessitate a written or pre-appointed political organisation or Constitution, and it is evident, that this fact is inseparable from the existence of every Government which has only limited and specifically defined powers, whether it be a National Government, like that of the United States, or a local

and subordinate one, such as that of a County Council, or a Municipal Council, of a City, or a Town; but we should be led into making a serious mistake, if we concluded that all the powers possessed by the Federal Government of the United States, and the manner in which they can be exercised, could be found explicitly stated in the words of the written instrument from which that Government has derived its existence. There is an unwritten, as well as a written Constitution of the United States, and a knowledge of the existence and of the working of that unwritten Constitution can only be derived from an acquaintance with the history of the people living under it, in the same manner

as we derive a knowledge of the actual Constitution of England, and know its workings, from a study of the history of the English Nation. But when we speak of an unwritten Constitution, whether in reference to that of the United States or of England, we do not use the words in their primary and literal meaning. An unwritten Constitution in the strict and precise interpretation of the word, would be a constitution of which there is not any permanent and accessible record; and it is hardly possible for us to imagine the existence of such a thing in the form of a persistent and practical reality. But when we speak of an unwritten Constitution we mean a

Constitution not written in a single instrument bearing that name, or in any number of separate and correlative documents collectively designated by that title. Every political and every personal right and privilege, which is possessed or can be claimed and exercised by each member of the British Empire as a right or privilege conferred upon him by the Constitution of his Country, and every political and personal obligation which can be imposed upon him, or enforced against him, on the ground that he is a member of the British Empire, is recognised, and affirmed, and defined, in an authoritative record of one kind or another. A large number of these

rights and privileges and obligations are specified and recorded in the long series of documents which contain the laws made and promulgated by the Imperial Parliament, commencing with Magna Charta, and extending down to the latest Statute which touches the organisation of the Empire or the political status and the personal rights of the citizens. The remainder of these rights privileges and obligations are affirmed and defined in the recorded judgments and decisions of the Superior Courts of the Empire throughout a period of four or five centuries.

In the same manner the citizens of the United States are dependent on the judgments and



decisions of the Federal Courts for the practical possession and exercise of many of the political and personal rights and privileges conferred upon them in general terms by the Federal Constitution.

The second section of the fourth article of the Constitution declares that "the citizens of each state shall be entitled to all the privileges and immunities of all the citizens of all the states"; **B**ut the right of a citizen of New York or Virginia to claim a particular right or privilege under the law of the state of Maryland or Louisiana, is dependent upon the question whether the particular benefit or privilege which he claims under that law,

is a privilege or immunity attaching to the position of citizenship in the particular State in which the claim is made; and if that question is a disputed one, it cannot be determined without the decision of a Federal Court. A large number of decisions have been given by the Federal Courts upon this provision of the Constitution, and among them was one which decided that the right of suffrage was not necessarily one of the privileges or immunities of the citizenship in any State, because the word "citizen", as used in the Federal Constitution, included women and other persons not entitled to the suffrage. In another case

it was decided that each State commands the tide-waters, and the beds of the tide-waters, within its jurisdiction, and the right of fishery is a property right, and not a privilege of citizenship, and, further that a State may grant to its own citizens the exclusive privilege of using the land covered by tide-waters on its borders containing Oyster beds, and may, with penalties prohibit the use of such lands by citizens or other states.

The original Federal constitution of the United States, as adopted 110 years ago, did not contain any definition of a citizen of the United States, and a long series of judicial decisions,

and opinions of eminent jurists, supported the contention that citizenship of the United States was dependent upon citizenship of one of the separate states; and that it was only in virtue of being a citizen of one of the separate states, that any person could claim the political rights and privileges conferred by the constitution upon citizens of the United States. This decision placed the inhabitants of the district of Columbia, and of the Territories belonging to the United States in a very peculiar and anomalous position. They were not citizens of any state, and they did not take any part in the election of the President or Vice-President, or of any member of the Senate, or House of

Representatives . The residents of the District of Columbia send a delegate to Congress, who can speak but not vote, and they are governed, as I have already explained, directly by Congress.

It was never denied, or doubted, that they, as well as the residents of the Territories, were entitled to <sup>personal rights and</sup> all the privileges conferred by the constitution upon citizens and that they could claim the protection of the Federal Government against the interference of any foreign power when they were travelling outside the United States; but these personal rights and privileges were secured by various interpretations placed by the Federal courts upon the word citizen, in

accordance with the exigencies of the cases that brought the rights and status of the citizens under review. In the same manner the Federal courts, before the civil war, frequently denied to persons of African blood - who were citizens of a state in which slavery did not exist - the status of citizenship of the United States. This anomalous and very unsatisfactory position of so many of the residents of the several states and Territories, was brought to an end by the fourteenth amendment of the constitution, which was adopted after the abolition of slavery - throughout the Union, and which provided that "all persons born or naturalized in the United

" States , and subject to the jurisdiction thereof , are  
 " citizens of the United States and of the State in  
 " which they reside " ; and it went on to declare that  
 " 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 <sup>person</sup> of life , liberty , or property , without  
 " due process of law , nor deny to any person  
 " within its jurisdiction , the equal protection of the

" laws ". The portion of this amendment which refers to the  
 " laws " . ~~It is very evident that a literal~~  
~~protection of life, liberty and property is identical in language~~  
~~interpretation of this amendment would place the~~  
~~with a portion of one of the previous amendments which~~  
~~life, property, and personal freedom of every~~  
~~were adopted to secure the recognition and preservation of~~  
~~person in the United States, directly under the~~  
~~what were regarded <sup>by the American people</sup> as the personal and natural rights of the~~  
~~protection of the Federal Government, and would,~~  
~~individual. But the previous amendments were directed~~



to the protection of those rights against any attempted  
therefore, ~~give the Federal Legislature, and the Federal~~  
~~infringement of them by Congress or the Federal Executive~~  
~~branch, the power to control and restrict, and~~  
and did not place any restriction upon ~~the violation~~  
~~abrogate all the local legislation of the several~~  
of them by the several Governments of the separate States;  
States upon these subjects, and to do this, would  
and the purpose of the 14<sup>th</sup> amendment was to extend  
to change the whole character of the Federal  
to every state Government a similar restriction to that  
Government, and to place every citizen in every  
which had previously placed upon the Federal Govern-  
separate state in a totally new relation to both  
ment in reference to any encroachment upon the rights <sup>in question</sup>  
the Federal Government, and the Government of his  
It is very evident that a literal interpretation of this amendment  
own state to which he had always previously looked  
would place the life property and personal freedom of every  
for the protection of his person and property. In  
person in the United States directly under the protection of the  
shot, a literal interpretation of the fourteenth  
Federal Government and would therefore give to the Federal  
amendment would reduce the several states to the  
Legislature and to the Federal Judiciary the power to control  
condition of provinces in a Unitary nation, and  
and to restrict and annul all the local legislation of the  
destroy the federal character of the Union of the  
several States upon these subjects; and to do this would be to

change the whole character of the Federal Government and  
to place every citizen in every separate state in a totally new  
~~states in all but name. It cannot for a moment~~  
relation of to that Government and to the Government of his  
be supposed that the authors and advocates of  
our state to which he had always previously looked for the  
that amendment intended to produce any such  
protection of his person and property. In short a literal  
~~revolutionary result, but in the flush of their~~  
interpretation of the 14th Amendment would reduce  
~~victory over the Southern States in the civil war,~~  
the several states to the position of provinces in a Unitary  
they had determined to consummate the abolition  
nation and destroy the fundamental character of the  
of slavery, by depriving the people of those  
Federal Union of the States in all but name. It cannot  
~~States of all local right and power of keeping~~  
for a moment be supposed that the authors and advocates  
the negro in a position of political and  
of that amendment intended to produce any such revolu-  
social subjection, and to attain this object, they  
tionary result, but in the flush of their victory over the  
put in jeopardy the fundamental principles of  
Southern States in the civil war they had determined  
the Federal Union of the States. As was to  
to consummate the abolition of slavery by depriving  
be expected, the time soon arrived when the  
the people of those States of all local power of keeping  
local Legislation of one of the States was  
the negro in a position of political and social subjection.

challenged, as being in conflict with the fourteenth amendment, and the case was carried to the Supreme Court at Washington for a decision.

The case was not one in which the status and rights of the colored population in any state were involved. The local legislation which was assailed, was an act of the Legislature of the State of Louisiana entitled "An act to protect the health of the city of New Orleans, and locate the stock landings and slaughter houses, and to incorporate the present city Live Stock Landing Company." This Act declared that the Company established under it should have the sole and exclusive

right of conducting and carrying on the live stock landing and slaughter house business, within the limits prescribed in the act; and that all animals brought into the city for slaughter should be landed at the stock landings, and slaughtered at the slaughter house of the Company, and nowhere else. The butchers of the City of New Orleans resisted the Act, as contrary to the fourteenth amendment of the constitution, and appealed to the Supreme Court of the United States against the decision of the Supreme Court of the State of Louisiana, which had upheld the validity of the Act.

The grounds of the butchers appeal were, that the Act abridged the privileges and immunities of the citizens of the United States, that it deprived the plaintiffs of the equal protection of the laws, and that it deprived them of their property without due process of law, contrary to the provisions of the first section of the Fourteenth amendment of the constitution. The Supreme Court consisted of nine Judges, and the validity of the Act was denied by four of them, and upheld by the five other Judges. The judgment of the majority was delivered by Mr. Justice Miller, in one of the ablest

arguments that had been delivered from that historic Bench, on which Marshall and Storey sat side by side for more than a quarter of a century, and enriched the jurisprudence of America and England with their stores of learnings and power of logical statement and deduction. Mr Justice Miller clearly and conclusively established the proposition, that the constitution, as amended by the fourteenth amendment, recognized two distinct citizenships, namely: the citizenship of the separate states, and the citizenship of the United States, and that each of them had different and corresponding privileges, and



immunities, and he defined the privileges and immunities attaching to the citizenship of a State as " Those privileges and immunities which are fundamental, and which belong to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which constitute the Union ". Among them he specified the right <sup>to enjoy life and liberty under</sup> the protection of the <sup>of the State,</sup> Government, <sup>the right to bring and maintain actions</sup> ~~in the courts of the State~~ <sup>Government</sup>, the right to acquire and possess property of every ~~kind~~ <sup>kind</sup>, and <sup>the right</sup> to pursue and obtain happiness and safety, subject to such restraints as the government may prescribe for the general good of the whole



community. He then asks "Was it the purpose of  
"the fourteenth amendment by this simple declaration  
"that no state shall make or enforce any law  
"which shall abridge the privileges and immunities  
"of citizens of the United States, to transfer the  
"security and protection of all the civil rights which  
"we have mentioned, from the states to the Federal  
"Government? and where it is declared that  
"congress shall have power to enforce that article,  
"was it intended to bring within the power of  
"congress the entire dominion of civil rights  
"heretofore belonging exclusively to the states?  
"All this, and more, he continues, must  
"follow, if the proposition of the plaintiffs in

" error <sup>is</sup> be sound, for not only are those rights  
" subject to the control of Congress, whenever, in  
" its discretion, any of them are supposed to be  
" abridged by state legislation, but that body  
" may also pass laws in advance, limiting  
" and restricting the exercise of legislative power  
" by the States, in their most ordinary and  
" usual functions, as in its judgment it  
" may think proper in all subjects; and still  
" further, such a construction, followed by a  
" reversal of the judgment of the Supreme Court  
" of Louisiana in this case, would constitute  
" this Court a perpetual censor upon all legislation  
" of the States on the civil rights of their

" own citizens, with authority to nullify such as  
" it did not approve as consistent with those  
" rights as they existed at the time of the  
" adoption of this amendment. The argument,  
" we admit, is not always the most conclusive  
" which is drawn from the consequences urged  
" against the adoption or particular construction  
" of an instrument, but when, as in the case  
" before us, these consequences are so serious, so  
" far reaching, and pervade so great a part  
" of the structure and spirit of our institutions;  
" when the effect is to fetter and degrade the  
" state governments, to subject them to the  
" control of Congress in the exercise of powers,

" heretofore universally conceded to them of the most  
" ordinary and fundamental character ; when, in  
" fact, it radically changes the whole theory of  
" the relations of the states and Federal government  
" to each other, and of both these governments to  
" the people, the argument has a force that is  
" irresistible, in the absence of language, to express  
" such a purpose too clearly to admit of doubt."

He then proceeds to enumerate the privileges  
and immunities attaching to the citizenship of  
the United States, and which the separate states  
cannot abridge, and which he declares were  
placed by the fourteenth amendment under  
the protection of the Constitution. These

privileges and immunities include the protection of life, liberty, and property by the Federal Government ~~only~~ only when the citizen is on the High seas, or within the jurisdiction of a foreign country; but they include the right to the writ of Habeas corpus, and the right to become a citizen of any state by a bona fide residence within its jurisdiction; and in rejecting the more literal interpretation of the words of the fourteenth amendment, which was supported by the four dissentient judges, the majority of the Court preserved the dual citizenship which is the basis and essence of American Federation and provided for the separate States a citadel

of defence in any future struggle to preserve their autonomy against the centralizing tendency of any legislation of Congress that may be enacted under the alleged authority of the amendments of the constitution which were adopted in the heat and stress of the controversy and passions evolved by the civil war. // D ends

The position occupied by the Supreme Court of the United States in the Federal Government, of which it forms a part, is one that claims the special attention of every student of the American Constitution, and of the Federal form of Government. / <sup>E begins</sup> The illustrations I have given of the power which it possesses to preserve or

obliterate, at critical periods of the Nations history, the boundary lines which mark the jurisdictions of the national and the State Governments, indicate the nature and immense extent of the influence which it exercises on the political history of the American <sup>people</sup> / Only a year ago it declared an act of Congress, which purported to levy an Income Tax, void under the Constitution, and thereby exempted the people of every state of the Union from all obligations to pay it.

In other cases it has repeatedly declared acts of the Legislature of a state to be contrary to the Constitution, and therefore inoperative and void. It has also the power to declare



invalid, anything done by the President or any officer of the Federal Government which is not permitted by the constitution. But the Supreme Court is not directed, or authorized, by the constitution to act spontaneously, and declare any act of Congress or of the Legislature of any state void before a case arises under it and comes before the Court for its decision. It must wait until it is moved at the suit of a citizen who declares that his personal or political rights or privileges have been infringed by the legislation which is challenged, and after it has given its decision its function is exhausted, and it depends upon the executive

branch of the Government to execute its Decrees.

If the President refuses to enforce such decisions, it is powerless to compel him to do so, and it is then a question for Congress to decide whether the President shall be impeached for disobedience to the Constitution, or be upheld in his refusal.

President Jefferson, on one occasion, refused to obey a mandamus granted by the Court to compel the admission of an applicant for a judicial office, to which he had been appointed by the President's predecessor; and President Lincoln ignored an order made by Chief Justice Taney for the issue of a writ of Habeas Corpus. In both cases the President relied on his own

interpretation of his powers under the constitution, and his responsibility to Congress for his conduct.

These instances of conflict between the different branches of the Federal Government, illustrate the fundamental principle of the complete separation of the legislative, the judicial and the executive branches of the Federal Government under the constitution, and their perfect independence of each other in their respective spheres. This feature of American Federalism is frequently criticised by English and French critics as a serious defect; but it may be that, upon close investigation, it will be found that the alleged defect is a necessary condition of many

of the advantages which the Federal form of Government, as it exists in the United States, secures as its ultimate results, and which are not secured by the English or French systems of Constitutional Government.

One eminent French writer upon Constitutional law, who has studied exhaustively the written instrument of the American Constitution, and who has also watched its working and compared it with those of England and France has declared that, in the position which it places the Executive in its relation to the legislature "Never was more art brought to bear in keeping up, and prolonging the existence of a Government which, weak, and divided against itself, without policy, and

"without credit, will not, or cannot, carry out  
"the will of the Nation"; But I venture to believe  
that a wider and deeper knowledge of the political  
and social forces which determine and direct the  
course of American Legislation and American History  
would have prevented the writer of that statement  
putting it forward as a correct picture of the actual  
working of the American constitution in relation to  
the settled and determined will of the American  
people. There have, undoubtedly, been periods  
of American History, in which the position of  
affairs appeared, on the surface, and to foreign  
observers, to be very much like that which  
the French critic has described; but in both

England and America, there have been crises in the history of the country, in which the Legislature failed to give expression to the contemporaneous wishes of the Nation, and in such cases it appears to me, that the advantage may frequently rest with the form of constitution which has placed the most obstacles in the way of the immediate realization of the popular will. In both countries the two opposing political parties set themselves to manufacture subjects for legislation, upon which they can appeal to the electors to give them a majority in parliament, or in Congress; but, in many instances, it is doubtful whether the

result of the elections expressed the mature and deliberate wishes of the majority of the people upon the particular question which has been most prominently discussed during the electoral campaign. In England, a ministerial or opposition majority, is frequently obtained by the inclusion of a number of secondary questions in the electoral programme, which secure the adherence of various sections of the community, who are <sup>perfectly indifferent or</sup> very lukewarm in regard to the principal plank in the party platform. But if the majority obtained by that process is sufficiently large, it is taken to be an acceptance by the people of the



entire platform, and legislation immediately follows to give effect to it. In America party questions are manufactured at the time of the election of a President, but the result of that election does not entail any immediate action. The opposing party may have a majority in one, or both branches of Congress during the whole of the President's term of office, and every two years the whole of one branch <sup>and one third of the other branch</sup> are renewed by fresh elections. By means of these periodical changes in the composition of the Senate and the House of Representatives, the actual wishes, and opinions, of the people in regard to the party questions that were the subject of

debate during the presidential election, have additional means and opportunities of expression before legislative action is finally taken upon them. As Mr Bryce, in his great work on the American Commonwealth, has truly said, "If the people desire perfect stability, it must " put up with a certain slowness and -- " cumbersomeness. It must face the possibility of " a want of action when action is called for: " If on the other hand, it seeks to obtain executive " speed and vigor by a complete concentration " of power, it must run the risk that that " power will be abused, and irrevocable steps " be too hastily taken." If a test of the

excellence of a political constitution, is the rapidity with which it allows laws to be made and executed in accordance with the wishes of the majority of the day, the English system of cabinet Government, with its dependence of ministers upon the legislature for their tenure of office, must certainly be admitted to be superior to that of the presidential and congressional Government of the United States.

But there are a number of keen and careful observers who share the judgment of the late Sir Henry Maine whose wide and profound knowledge of political and social institutions in many ages eminently fitted him to form

a reliable opinion on the subject, and who asserted that the English people "are drifting towards a type of Government associated with terrible events. " A single assembly armed with full power over " the constitution which it may exercise at " pleasure x x x x x a theoretically all powerful " convention, governed by a practically all " powerful secret committee of public safety." Such a type of Government can never arise under the constitution of the United States, so long as it retains the fundamental features which its authors impressed upon it. The composition and continuity of the Senate effectually protect it against any attempted coercion by the House of

Representatives or by a temporary majority of the people, while its power of veto in the matter of appointments to the federal judiciary and in regard to the appointment of all the superior officers of the federal government who are under the direction and control of the President, together with its participation in the making of all treaties with other nations, secure for it a prestige and an independent and prominent activity in the political life of the nation which enable it to exercise an influence on all federal legislation which the House of Representatives is unable to resist or diminish. As a necessary consequence of its predominant influence and prestige the Senate has always attracted a very

large proportion of the ablest and most prominent politicians in the country with the result of strengthening and extending its influence on the public opinion of the nation. In the veto power of the President the Constitution ~~of the United States~~ has also provided another bulwark against the coercive attempts of temporary majorities whether in the electorate or the legislature, and the emphatic testimony of American history on this point is that a President does not suffer any loss of public favour or confidence by the exercise of this power. On the contrary the usual result of the exercise of it is to elevate him in public esteem, and in the case of

President Cleveland we find that it was his free and courageous exercise of his veto power in the successive positions of Mayor of Buffalo and Governor of the State of New York which drew the attention of the country to him and led to his nomination and election to the Presidency. In the last place the Constitution has provided in the Federal Supreme Court a final and permanent restraint upon any violation of the personal rights which the Constitution has assured to the individual citizen for the protection of his life, his liberty and his property. — Intrenched in the Constitution beyond the reach of President or Congress the Federal Supreme



court in response to the appeal of the humblest citizen will restrain and annul whatever the folly or the ignorance or the anger of a majority of Congress or of the people may at any time attempt to do in contravention of any personal or political right or privilege the Constitution has guaranteed to him. So great and momentous a power has probably never been vested in any other judicial tribunal in the world, and the protective functions and the impregnable position assigned to the Supreme Court of the United States may always with pardonable pride be claimed by the advocates of a republican form of government as having been first exhibited to the

world in association with republican institutions.

Many of its most important and beneficent decisions have been founded upon those amendments of the Constitution ~~decisions may be cited as examples of a~~ which <sup>as</sup> I have previously stated are frequently described as the ~~successful application to practical politics of~~ American Bill of Rights and those decisions may be cited as ~~the essentially republican doctrine of the natural~~ ~~rights of man.~~ ~~Discredited as that doctrine~~ ~~truly republican doctrine of the natural rights of man~~ ~~may be~~ in many quarters today in consequence of the distortions it has suffered at the hands of some of its expounders in the past it has the support and endorsement of the greatest living English thinker of our day, and it ~~appears very probable~~ <sup>maybe</sup> that it will ultimately be found to be the true and final justification of all resistance to the tyranny of the majority

which is so often and so erroneously regarded  
as the essence and distinctive principle of  
democracy. The unrestricted rule of the  
majority of the hour is at all times a  
contradiction of the true doctrine of the  
fundamental rights of ~~man~~ <sup>the individual</sup>, and ~~it may~~  
~~well be a matter of satisfaction~~ to every  
man who in the midst of the ~~turmoil~~  
political ~~life~~ and social ~~ferment~~ <sup>turmoil</sup> that  
surround us to day speculates on the  
future of human society <sup>it may well be a substantial satisfaction</sup> to know <sup>that</sup> during  
a period of more than a century a  
political constitution which guarantees to  
every man living under it the protection of

the rights asserted by the Declaration of Independence to be inalienable has proved capable of providing the necessary machinery to govern a people which during that period has increased from four to seventy millions and that while it places the ultimate source of all political authority in the whole body of the citizens yet erects effectual barriers against all attempts to establish an ochlocratic despotism.