

Then follow the declaratory amendments, which were proposed by the first National Congress. All of these amendments are implied in the Constitution and could therefore be acted upon by the State legislatures. In all these Amendments the Rights of the states were mentioned but once, in the Tenth Amendment, all others refer solely to the Rights of the People.

## THE CONCLUSIONS OF THE SUPREME COURT

The National Prohibition Cases were heard in the Supreme Court of the United States, on March 8, 1920, and following days. The decisions were rendered June 7, 1920.

Mr. Justice Van Devanter announced the conclusion of the Court on *the questions involved*. These words as spoken by the Justice denote, that *no other questions were involved* in the challenges against the validity of the Eighteenth Amendment, but the four, on which the Supreme Court reached conclusions namely:

(1) The adoption by both houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution sufficiently shows that the proposal was deemed necessary by all who voted for it. An express declaration that they regarded it as necessary is not essential. None of the resolutions whereby prior amendments were proposed contained such a declaration.

(2) The two-thirds vote in each house which is required in proposing an amendment is a vote of two-thirds of the members present -- assuming the presence of a quorum -- and not a vote of two-thirds of the entire membership present and absent. *Missouri Pacific Ry. Co. v. Kansas* 248 U. S. 276.

(3) The referendum provisions of state constitutions and statutes cannot be applied consistently with the Constitution of the United States, in the ratification or rejection of amendments to it. *Hawke v. Smith*, ante, 221.

(4) The prohibition of the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes, as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article V of the Constitution. (*National Prohibition Cases*, 253 U. S. 350, 384).

The fifth conclusion is based upon the first four which negative all challenges made (on the questions involved) and simply states the evident result, that the Eighteenth Amendment is still in the Constitution and must be obeyed.

There are a number of other conclusions, but none of these have anything to do with the validity of the Eighteenth Amendment, but refer to the different cases at bar.

people? ... It is, sir, the people's constitution, the people's government -- made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The states are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the state legislatures, as political bodies, however sovereign, are yet not sovereign over the people .... The national government possesses those powers which it can be shown *the people* have conferred on it, *and no more* .... We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration .... This government, sir, is the independent offspring of the popular will. It is not the creature of state legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on state sovereignties. The people, then, sir, erected this government. They gave it a constitution, and in that constitution *they* have enumerated the powers which *they* bestow upon it .... Sir, the very chief end, the main design for which the whole constitution was framed and adopted, was to establish a government that should not be obliged to act through state agency, depend on state opinion and state discretion.... If anything be found in the *national* constitution, either by original provisions, or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become practically a part of the constitution, *they* will amend it at their own sovereign pleasure. But while the *people* choose to maintain it as it is -- while *they* are satisfied with it, and refuse to change it -- *who* has given, or who *can* give, to the state legislatures a right to alter it, either by interference, construction, OR OTHERWISE? Sir, the people have not trusted *their* safety, in regard to the general constitution to these hands. They have required other security, and taken other bonds."

Under the terminology of 1788 the "Conventions" are "the people themselves." There was at that time no other way known for the people themselves to act. It was physically impossible for them to act in any other way.

The assumption of the advocates of the Eighteenth Amendment proclaiming the legislatures of the States as Agents or Attorneys for the citizens of the United States is ridiculous in view of the historical facts. The "Conventions" who made the Constitution, beginning with the preamble: "*We, the People* of the United States" and who made the Article VII as well as the Article V, are the same "Conventions" who demanded the declaratory Ninth and Tenth Amendments with their

And then the Chief Justice elaborates on the first and second section. But, even if the Supreme Court under the prevailing circumstances did not need to notice the third paragraph, the People must and will!

It is the *third Section* of the Amendment, which renders the whole makeshift unconstitutional. The challenge of the people requires not nearly so much argument, as was expended upon the first and second sections. It is almost self-evident. A common-sense reading of the basic law of the land reveals the fact, that the Ratifiers of the Eighteenth Amendment were not competent to ratify, and plainly usurped powers, which they did not possess, and which the Constitution did not intend to give and did not give to them. The proposal of the Congress as well as the attempt of the State legislatures to create a new power to interfere with the human freedom of the citizens are constitutional absurdities.

Plain common-sense logic tells us that if the people who made the Constitution reserved all powers, not granted in the Constitution to the United States Government, the only government which the American citizen as such recognizes, to the People themselves, then they also reserved the right to exercise these powers to the people themselves. And they did in Article V. But, supposing there be no Article V in the Constitution at all -- who would then have the amending power? Surely not the legislatures of the States! The People only could then amend the Constitution in any form or manner. In the Constitution Convention a motion to strike our Article V was made but failed.

In Politics, in Journalism, in Economics, and especially in Law, it is essential to study the assertions of the opponents, if one wants to arrive at the truth of his own opinion.

The twenty-two lawyers appearing against the validity of the Eighteenth Amendment, let Section 3 go, without challenging it in a conclusive manner. There is for instance the very polite phrase of Mr. Root: "*We are not at liberty to assume*" (see page 30) which seems to have been overlooked by the Supreme Court, because there is no conclusion on it.

But the thirty-five lawyers defending the validity of the Eighteenth Amendment simply *took the liberty to assume*, and in no uncertain way every soul of them asserted the assumption that Section 3 is as solid as the Rock of Gibraltar. Each one of the thirty-five contributed his full portion to this assertion, and gave Section 1 the go-by. The them Section 3 meant all and everything. Out of the mass of the assertions we pick out only the one, in which that assumption is most efficiently asserted:

Here comes "Mr. Solicitor General" of the United States, representing the Government of limited Powers, which wants to get rid of the limitation, namely The Congress, and argues:

Corrupt Practices Act, Mr. Hughes submitted arguments diametrically opposed to his arguments in the Prohibition Cases. In both cases he "earned" his retaining fee.

Similar it is with the other briefs for validity. Some of their assertions are so absurd, that they appear clownish. For instance, [in] only one passage from the brief of Wayne B. Wheeler, general Counsel for the Anti-Saloon League, and claiming to be an "Amicus Curiae," he admitted that the people under the Republican form of government, might act unwisely. But not so the Prohibitionists, for "Prohibition," he claims verbally, "is generally recognized as the greatest piece of *constructive* legislation that was ever adopted by a self-governing people."

And then he goes on to explain, how "the self-governing people" made this wonderful piece of "constructive legislation." He asserts, that the State legislatures, when making the Eighteenth Amendment, were *not legislating* at all but were "a body of representatives sitting in a conventional capacity." And the Supreme Court had to sit and listen to such palpable rot.

Our space does not permit to go deeper into these briefs for validity. We are more concerned with the briefs challenging the validity of the Eighteenth Amendment. The twenty-two challengers were headed by Mr. Elihu Root, the distinguished leader of the American Bar. To our amazement we find that the same error which actuated the defenders of the Amendment, namely the supposition, that Article V of the Constitution grants the legislatures *National* powers to interfere with the human rights of men, which it does not, dwells also in the minds of the challengers.

Mr. Root's argument was very earnest and evidently sincere. He attacked the validity of the Amendment on the ground, that it was not an Amendment but vicious and unconstitutional legislation. He declared that sumptuary laws are not constitutional amendments in truth or essence. He grouped his challenge with the challenge of the States of Rhode Island and New Jersey, by arguing that the so-called Eighteenth Amendment directly invades the police powers of the States and directly encroaches upon their right of local self government.

This is sound logic and convincing. One may say that Mr. Root echoes the sentiments of the Philadelphia Constitutional Convention, who went strongly on record against giving congress Power to make Sumptuary Laws (see page 20). But the Supreme Court concluded against this challenge of Mr. Root and others.

In several instances Mr. Root came on the very edge of challenging the constitutionality of the Eighteenth Amendment correctly but did not complete the job. For instance when he said:

**"The amending power provided by Article V of the Constitution and whether the Eighteenth Amendment has, in fact, been ratified, are questions committed by the Constitution to the *political* branch and not to the *judicial* branch of the Government."**

Here is your definite information by Mr. Solicitor-General, that the Constitution of the United States is now and hereafter to be amended by the politicians in Congress and the State legislatures, and that the Supreme Court has not a word to say about it.

Talk about "Assumption." The statement is simply the most daring imposition on the understanding of the people ever heard in Court.<sup>19</sup> Again the Constitution makers give us the true answer to this preposterous assumption. Alexander Hamilton, the man who collaborated with James Madison in the writing of Article V, made strong appeals to the Americans to say "Yes" to the proposed Constitution. He discussed the Constitution and especially the Supreme Court in a series of articles in the numbers 78 to 81 of the "Federalist," and there clearly states, that the constitution imposes upon the Supreme Court the duty of exercising its judgement to ascertain that the law has been made by those competent to make it.

The Supreme Court of the United States will not fail the American people, when the most momentous problem, that has confronted the Nation and the Court since 1788, is challenged correctly.

It is a well-known principle of justice, that the accused is innocent, until he has been proved guilty. Under the same token the Supreme Court of the United States holds every act of Congress or of the State legislatures *constitutional* until otherwise challenged. It is not the duty of the Supreme Court to examine every law of Congress or of State legislatures when the law is passed and put its stamp of approval on each law.

It is however, the duty of the Supreme Court to hear and to decide every point on which the constitutionality of any law is challenged. If the Court finds that any of these challenges are well taken, and that the law thus challenged is not within the prescribed powers of the law-makers, then there is no law. In other words, then the law is *unconstitutional*.

On the other hand, the fact, that a law has been before the Supreme Court and its validity challenged on one or more points, all of which were negated by the Court, does not prevent other challenges, which, if brought before the Court, would determine that "law" as "no law."

And again, rigid enforcement does not make any law constitutional. Here looms up the question of restoration and reparation to those American citizens, who have been subjected to losses, damages, imprisonment and other punishments, through the rigid enforcement of an unconstitutional law. It may be good judicial theory and practice to hold that a law is constitutional until it is declared unconstitutional. But, that this is also true of *fundamental* laws, such as the Eighteenth Amendment, goes against good logic.

It is perfectly sound logic to say that a Fundamental Law, such as an Amendment to the Constitution, granting a New Power to interfere with the Rights of the People, cannot be binding on the people, *until it has become their own act*.

Ignorance of the law is not a valid plea in any court and assures no immunity from punishment. Why then should the legislative violators of the basic law of the Country go unpunished? But there is no law providing for punishment in such cases. The punishment rests solely in the Court of last resort -- *the People!* But restoration and reparation -- that is another question still to be decided.

## IN CONCLUSION

The American Constitution is a living fact, and not a grand and glorious assertion to be used for embellishing fanciful orations and political after-dinner speeches.

The Rights and Powers of the American People over their own instrument depend solely upon the correct interpretation of Article V in the spirit and the letter of 1776 and 1788.

The assumption which clouds the issue in the minds of Constitutional Tory lawyers was first invented by the Anti-Saloon League in 1917. Nobody ever heard of it before that time. This unpatriotic assumption was assiduously peddled through the land by newspapers, and acclaimed on the rostrums and in the pulpits. Unscrupulous representatives of the people in Congress found courage to act upon this assumption, and the result is the Eighteenth Amendment, violating every principle of the American conception of Government.

To the present writer it is absolutely inconceivable, that the Supreme Court of the United States will uphold the constitutionality of the Eighteenth Amendment, if Section 3 of the same is correctly and determinedly challenged. The writer's esteem of the wisdom of the Court and his belief in the concern of the individual justices for their judicial rectitude and their place in the history of the United States, does not permit him to harbor such a thought. On the other hand, the writer has heard widely different opinions. For instance that the Supreme Court themselves, after hearing the audacious assumptions and assertions of Mr. Charles E. Hughes, the champion of twenty-four power usurping State legislatures, and of Mr. Solicitor-General, the champion of the Government of limited powers, which wants to get rid of its limitations, might have challenged them. Such a possibility the writer considers too far-fetched. Even Supreme Court Judges must take cognizance of Rules of Procedure, Restrictions, Precedents, etc. The writer's common sense it appears that such a challenge, desirable as it may seem to the advocates of the people's rights, would denote an autocratic and not a judicial attitude of mind on the part of the Court.

President Coolidge, in his Labor Day oration 1924, said:

**"The fact is, the Constitution is the source of our freedom. Maintaining it, interpreting it and declaring it, are the only methods by which the Constitution can be preserved and our liberties guaranteed."**

The President utters only common sense, truthfully and correctly. If the President speaks in that strain it can be safely said, that he included in his thought the Declaration of Independence, the first and

## THE SUPREME COURT OF THE UNITED STATES

The establishment of the Supreme Court as one department of the government of American citizens involved a check upon the other departments. It was designed as a bulwark against the use of tyrannical power and to protect every individual liberty of the American citizen from usurpation of power by any governments, whether National or State legislatures.

It has been the habit of many to describe the powers of the Supreme Court to annul a statute of Congress on the ground of its unconstitutionality, as Judicial usurpation. But there are decidedly two sides to that question. Under the Tory concept of government, where there is no written constitution and where the power of parliament is unlimited, such a judicial power is unknown. Under the Tory concept of government the King and the Parliament can do no wrong.

Quite otherwise under Americanism. Here we have a written Constitution, *unalterable by government*. The powers of Congress are enumerated, and all other National powers strictly reserved to the people. That the framers of the constitution intended to endow the Supreme Court with fundamentally interpretative powers, has never been successfully contested.

Power, wherever lodged (even in a Supreme Court), is naturally aggressive. Every other department without a check upon it, quickly extended its powers. From the very beginning Congress passed laws out of the constitutional boundaries. John Jay, the first Chief-Justice, was driven to distraction by the existing conditions, which even this eminent jurist could not unravel.

Later, in 1801, came the great John Marshall,<sup>11</sup> and made the Constitution a living instrument.

In *Marbury vs. Madison* (1803) Chief Justice Marshall announced for the first time, that the Supreme Court possessed the right as well as the power, to declare null and void an act of Congress in violation of the Constitution. It is amazing in how few words, precise but absolutely convincing, this statement was made. The Chief Justice said:

**"It is emphatically the duty of the Supreme Court to state what the Law is, and if the Law is not within the prescribed powers of the Congress making it, it is no law."**

In *Fletcher vs. Peck* (1810) he declared that it likewise possessed the power to put the stamp of nullity upon any State law that conflicted with the Constitution. When the time came for a judgement to be pronounced in *Cohens vs. Virginia* (1821) involving the supremacy of Federal law over State law, Marshall, in defining the new and growing sense of nationality, said:

It becomes imperative that the mask of hypocrisy be torn from the faces of the canting simulators of goodness, and political prohibitionists as well as the prohibition politicians.

There are millions of honest Temperance advocates, men and women, who are sincere in the belief that Prohibition is a moral and not a political issue. They have been systematically misled. That belief is erroneous. If the people of the United States desire prohibition, it can be honestly and easily obtained -- by the conventions of the people, as named in Article V of the Constitution. But, Prohibition, as effected by the alleged Eighteenth Amendment, is purely and simply a political issue of direst consequences for the maintenance of the American conception of government. It is an absolute denial of the spirit of Americanism.

This pamphlet speaks in several instances of Tories and Toryism, the British conception of government. Let it be understood that the writer finds no fault with honest Tories, namely, with the sincerely convinced advocates of Toryism. What the writer objects to is, that a horde of fanatical hypocrites are permitted to drive a horde of cowardly politicians in Congress and State legislatures into surreptitiously and unconstitutionally changing the spirit and form of American Government.

There are advocates of the advantages of Toryism, in Congress and outside. They too, can easily achieve their ends constitutionally *if the people*, whose will is absolute, agree with them. All Congress has to do is to pass with a two-third majority of both houses a resolution, declaring it necessary to amend Article V of the American constitution by striking out the words: "Or by Conventions in three-fourths thereof." This amendment must then be proposed for ratification to the Conventions of the people of the several States, and if three-fourths of these Conventions ratify the amendment, then the Tories have won out and the will of the people is not any more supreme and absolute.

Exactly the same Amendment as above outlined, in exactly the same words, was proposed to the Philadelphia Convention of Constitution makers, by Elbridge Gerry, of Massachusetts, and was ingloriously defeated by 10 Noes to 1 Aye.

What would the Conventions of the People today do with such an Amendment? One needs not be a prophet to foresee it. There would simply be the unanimous confirmation, that the spirit of 1776 and 1787 is still alive.

The writer is not a tradition worshipper and not committed to the immutability of the Constitution. But he most strenuously objects to its alteration by governments, actuated by greed of power. He believes with Daniel Webster: "If anything be found in the *National* Constitution,

The American people have a right to expect that their representatives in Congress know or endeavor to learn so much of American Constitutional history that it is clear to them, in what manner the Constitution may be amended *constitutionally*.

The people *know*, that Article V, provides the constitutional procedures of amendment. The *people know* that Article V provides a constitutional mode for the exercise of two distinct powers: the one being the unlimited power of the People to amend the Constitution in any of its provisions; the other the limited power of the State legislatures to ratify proposed federal amendments to the Constitution or declaratory amendments on matters already in the Constitution.

Moreover, just a little common sense tells, that any constitution can be amended (altered, added to or take away) only by the party who made it. Read the Preamble of the Constitution and also read Article VII, and find who made and ratified the Constitution namely, "*WE, THE PEOPLE,*" in Conventions assembled, the only agency who could make it. Then read in the Tenth Amendment the plain statement that every *National* power to interfere with the human freedom of Americans, not granted in Article I, is reserved to the *American people* themselves.

Under Article V of the Constitution the legislatures of the States cannot even *propose* any amendment to the Constitution much less *ratify* one of a National character. The power to *propose* an amendment is vested in Congress, as the only government of the American people, and in the People themselves, in convention assembled.<sup>13</sup>

Just because these legislatures were competent to ratify the 17 preceding amendments, the Congress without regard to the Constitution, held these legislatures to be also competent to grant Congress a New Power. With other words, Congress proposed to the State legislatures to constitute themselves as a sort of Super-Government over the American Nation, competent to grant such a new power to Congress and to themselves. And the legislatures promptly took the hook and committed the usurpation which Iredell pointed out 135 years ago.

Thus these power-usurping legislatures created a status quo in America which is unbearable to the American citizen. The Eighteenth Amendment (established in violation of the fundamental law of the country) is tending to disestablish the majesty of all law.

The *usurpation* of omnipotent power, on the part of the State legislatures, over the human rights of American Citizens can be proved easily by any one who can read the American language and *think* logically. In the case of Barron vs. Mayor of Baltimore, supra p. 376 the Supreme Court of the U. S. decided: "The *entire* constitution gave *no power of any kind* to the State legislatures."

## APPENDICES

## APPENDIX I

## THE DECLARATION OF INDEPENDENCE

[The unanimous Declaration of the thirteen united States of America]

Adopted July 4, 1776.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such Government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the Administration of Justice, by refusing his assent to laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

## THE PROPOSAL AND THE MAKING OF THE ALLEGED EIGHTEENTH AMENDMENT

Before we return to more recent happenings, let us listen to a little advice. In the North Carolina Convention, called to ratify the constitution, rose James Iredell, a prominent member and later an eminent Justice in the U. S. Supreme Court, and advised:

**"If this constitution be adopted, it must be presumed the instrument will be in the hand of every man in America, to see whether authority be usurped; and any person by inspecting it, may see if the power claimed be enumerated. If it be not, he will know it to be a usurpation."**

This we will keep in mind.

Every writer, critic or historian who ever concerned himself with the U. S. Constitution, bears testimony to the simplicity of the language, the lucidity and the clarity of expression of the document. In seven comparatively short articles an entirely new system of government, dual in its character -- National and Federal -- is evolved, and no one with just an average command of language, can fail to understand.

In view of this fact, one is amazed at the ignorance of law-givers and law-expounders in this country. This ignorance is not always innocent. For instance, we observe, that during the debates of Senate Resolution 17, which was the resolution to propose the 18<sup>th</sup> Amendment, the Article V of the Constitution was always, both in Senate and House, read in corrupted form. We have produced the Fifth Article on page 17. Whenever the chairman of the Judiciary Committee or others read this Article V, they promptly left out the line: "or by conventions in three-fourths thereof." Not a one Congressman or Senator ever referred to these words, excepting one Senator, who thought it strange, that there were two modes of procedure provided for the ratification of an amendment. But the gentleman let it go at that, he didn't inform himself on the reason why. If the Senator had instructed his secretary to study the Documentary History of the Constitution (Senators never have time to do such work themselves) he might have learned that these few words are the most important in the article. He might have learned that without these words in Article V the original Constitution would never have been ratified by the American people. He might have learned, that these words constitute a constitutional safety-brake for the people. He might have learned, what these words meant to the Philadelphia constitution makers in 1787, and also, what they meant then, they mean today.

them and the State of Great Britain, is and ought to be totally dissolved; and that as *free and independent states*, they have full power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which *Independent States* may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our Sacred honor. John Hancock

NEW HAMPSHIRE.	Josiah Bartlett, Matthew Thornton.	William Whipple, Robert Treat Jayne, Elbridge Gerry.
MASSACHUSETTS BAY.	Samuel Adams, John Adams,	William Ellery.
RHODE ISLAND. CONNECTICUT.	Stephen Hopkins, Roger Sherman, Samuel Huntington,	William Williams, Oliver Wolcott.
NEW YORK.	William Floyd, Philip Livingston,	Francis Lewis, Lewis Morris.
NEW JERSEY.	Richard Stockton, John Witherspoon, Abraham Clark.	Francis Hopkinson, John Hart,
PENNSYLVANIA.	Robert Harris, Benjamin Rush, Benjamin Franklin, John Morton, George Ross.	George Clymer, James Smith, George Taylor, James Wilson,
DELAWARE.	Cæsar Rodney, Thomas McKean.	George Read, Thomas Stone.
MARYLAND.	Samuel Chase, Charles Carroll, of Carrollton,	William Paca, Thomas Stone.
VIRGINIA.	George Wythe, Richard Henry Lee, Thomas Jefferson, Carter Braxton.	Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee,
NORTH CAROLINA.	William Hooper, John Penn.	Joseph Hewes,
SOUTH CAROLINA.	Edward Rutledge, Thomas Heywood, Jr.,	Thomas Lynch, Jr., Arthur Middleton.
GEORGIA.	Button Gwinnet, George Walton.	Lyman Hall,

served a good purpose, especially at a time, when the far-reaching functions of the Supreme Court of the United States were not yet fully understood.

For the purpose of this discussion a short review of the Ninth and Tenth Amendment is essential. The Amendments read:

### 9<sup>th</sup> AMENDMENT.

**"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."**

### 10<sup>th</sup> 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."**

The language of these "Amendments" is plain enough. No man could ever enumerate all the Individual Rights not relinquished by the people. The *Rights* enumerated in the ten amendments are only the more important and outstanding ones which are not relinquished. All other Rights are specially retained by the people, even though they are not enumerated. The Ninth Amendment declares in Double-riveted fashion, that the people relinquished absolute no *Rights*, whatsoever, excepting those specifically involved in the enumerated powers granted to the National government.

And then, to further strengthen the people's position, comes the Tenth Amendment, declaratory of the already existing fact, that all *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.

These declaratory Amendments (especially the Ninth and Tenth) graphically illustrate the intensive earnestness of the people, who ratified the Constitution, to obtain a Constitution *absolutely unalterable* by governments. The citizens demanded every safeguard, that they themselves could control the governments, and never be controlled by governments without their special consent or grant of power. That was, and is, and must remain the undying spirit of Americanism.

## THE OTHER AMENDMENTS

Similar conditions surround the next seven Amendments. None of them interfere with the human rights and liberties of the citizens (in fact, they extend these rights). Every one of the 17 Amendments preceding the 18<sup>th</sup>, is concerned with and pertains to the original provisions and powers of the constitution. The same is true of the Nineteenth Amend-

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.

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

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

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

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

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

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

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

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

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require 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.

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.

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

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

## AMENDING THE CONSTITUTION

The makers of the Constitution, in their vision for the future provided in the Constitution the *modus operandi* for amending the same. This provision is found in Article Five.

### ARTICLE V

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the First Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

Article Five was written by James Madison, with whom Alex-ander Hamilton collaborated. In Madison's original draft, the power to ratify any amendment was vested only in the conventions<sup>5</sup> of the people. After long discussions on the subject, Madison and Hamilton foresaw these probabilities:

(1) Of future articles to the Constitution of a Federal character, that is of a character on which the State legislatures are competent to act.

(2) Of so-called Declaratory or Explanatory Amendments, the substance of which is in the Constitution, but which Congress desires in order to avoid misconstruction and encroachments on the Constitution. As such Declaratory "Amendments" are in the Constitution, they cannot impair the individual liberty of the people, and the legislatures of the States are therefore competent to act on them.<sup>6</sup>

(3) Of Amendments of a National character, granting power to Congress and impairing the individual freedom of the citizen. Such a grant, however, can emanate only from the people direct. The ratification of such an amendment rest exclusively with the American citizens, in convention assembled, in three-fourths of the several states. There is no other competent power. Such an Amendment can be ratified only in the same manner as the original constitution was ratified, as provided for in Article VII.

In order to facilitate the ratification of Federal and Declaratory

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

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

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, arsenals, dockyards, and other needful buildings;--and

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.

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

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.

No Bill of Attainder or *ex post facto* law shall be passed.

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

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

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

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

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

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's 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.

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.

The Constitution grants many Federal and National powers formerly exercised by the individual States, to the new Federal government, but all Federal powers not expressly delegated, *are reserved to the States respectively*, and all National powers, not granted by the people to the new government, are reserved "*to the people themselves of America.*" The constitution grants no new power of any kind to the States.

The powers granted by the American people to the National Government for the government of human beings, are enumerated in the First Article of the Constitution. From this article the American Government is called "one of enumerated powers." No Congress, no legislature of any one state, not even the legislatures of all the States can grant any power of similar kind or add to, or take away from these grants or alter and amend these grants of the First Article. All such power not enumerated is definitely reserved to the American people themselves. The State governments never are the American people and never represent those *people* for *National* purposes.

On the other had, while the American people can make, alter or amend any *Federal* Article of the constitution, this power can also be exercised by the State legislatures, because they have exercised this right to make Federal Articles, before the Constitution was made and that right was not taken away from them and not prohibited by the Constitution.

The Federal part of the constitution is subordinate to the *National*. The Congress, or legislative branch of the government can make any laws within the range of its enumerated powers, and the States are bound to obey. The legislatures of the States cannot make any law of *National* character or conflicting with a National law. In case of conflicting laws, the *National* law supersedes.

The protection of the freedom, and political liberty of the citizens as well as the promotion of their happiness and welfare require, that the government has certain powers to interfere with the freedom of the individual citizen. These powers are generally known as Police Powers and in America are in the main the prerogatives of the States respectively.

The First Article of the Constitution contains *all* the enumerated *National* powers *ever* granted by the people to their National government. These grants are very few, although the people vested all necessary ability in their National government to protect the Freedom of the Citizens and to promote their Happiness and Welfare.

*defend the Constitution of the United States."*

Sec. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in Cases of impeachment.

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.

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.

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

SEC. 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

SECTION 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.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State;--between citizens of different States; --between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the

The Convention had no legal status, as Madison, Hamilton and others pointed out repeatedly. And again, the work of the convention, the constitution as submitted, had no legal force whatsoever. It was plainly a "proposal," nothing more. Neither the Legislature of any one of the States, nor the Legislatures of all the States, nor the Federal Congress, could give legal life to the Constitution. That could only be done by the People of the different States, in Convention assembled, and thus it was done. The Ratification by the Conventions of nine States was necessary to establish the Constitution between the States. This was accomplished by the vote of the Convention of New Hampshire on June 21, 1788, which date is the birthday of the American Nation of Men. Arrangements for the election of the President and the Congress were made at once. The first Session of the Congress under the Constitution opened in New York, March 4, 1789.

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## THE MAKING OF THE CONSTITUTION

A thorough and interested study of the proceedings of the Constitution Convention at Philadelphia is fascinating.

The dignity and decorum of the august body, the wisdom and discrimination foresight of the delegates, their unfailing courtesy toward each other, their command of language, always plain and accurate, never perplexing, evokes admiration. No wonder that these men became renowned as the marvelous leaders of the people better acquainted with the science of government than any other people in the world.

These men sat three months and fifteen days in their effort to frame "a constitution which will secure the blessings of Liberty to all American individuals and their posterity." The great British Commoner Gladstone, says: "The American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

Four preliminary plans, previously prepared by some of the delegates, were submitted, namely: The Virginia Plan, the Chas. Pinckney Plan, The Alexander Hamilton Plan, and the New Jersey Plan.

The New Jersey Plan was confined to a revision of the Articles of Confederation, and dropped out of consideration.

The other three plans, although written absolutely independently and far away from each other, showed a striking similarity in the main features.<sup>3</sup> Both Hamilton and Pinckney soon became supporters of the Virginia plan prepared by Mr. Madison, and submitted by Mr. Randolph.

fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of it's equal suffrage in the Senate.

## ARTICLE VI

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

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States

## ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

G<sup>o</sup>. WASHINGTON, *Presidt*

*and deputy from Virginia.*

NEW HAMPSHIRE.	JOHN LANGDON,	NICHOLAS GILMAN.
MASSACHUSETTS.	NATHANIEL GORHAM,	RUFUS KING.
CONNECTICUT.	WILLIAM S. JOHNSON,	ROGER SHERMAN.
NEW YORK.	ALEXANDER HAMILTON.	
NEW JERSEY.	WILLIAM LIVINGSTON,	DAVID BREARLEY,
	WILLIAM PATERSON,	JONATHAN DAYTON.
PENNSYLVANIA.	BENJAMIN FRANKLIN,	THOMAS MIFFLIN,
	ROBERT MORRIS,	GEORGE CLYMER,
	THOBAS FITZSIMONS,	JARED INGERSOLL,
	JAMES WILSON,	GOUVERNEUR MORRIS.
DELAWARE.	GEORGE READ,	JACOB BROOM,
	JOHN DICKINSON,	GUNNING BEDFORD JR.,
	RICHARD BASSETT.	
MARYLAND.	JAMES MCHENRY,	DANIELL CARROLL,
	DAN JENIFER, OF ST. THOMAS.	
VIRGINIA.	JOHN BLAIR,	JAMES MADISON JR.
NORTH CAROLINA.	WM. BLOUNT,	HUGH WILLIAMSON,
	RICHARD D. SPEIGHT.	
SOUTH CAROLINA.	J. RUTLEDGE,	CHARLES C. PINCKNEY,
	CHARLES PINCKNEY,	PIERCE BUTLER.
GEORGIA.	WILLIAM FEW,	ABRAHAM BALDWIN.

Attest: WILLIAM JACKSON, *Secretary*

## EARLY AMERICAN GOVERNMENTS

The American Colonies, under British domination, were strictly independent of each other, but they were all subjects of the British King and parliament. The obnoxious Stamp Act brought about the first attempt to get together. The first Continental Congress of 1765 confined itself to a "Declaration of Rights and Grievances," which was promptly denied by the British parliament. As the Stamp Act could not be enforced, parliament repealed the same, but at the same time asserted its power and right "to bind the colonies in all cases whatsoever."

The Colonies considered the repeal of the Stamp Act as a victory of their viewpoint, and were duly grateful, but their rejoicing was of short duration. A flood of new indignities heaped upon them by the British Parliament, led to the call of another Congress, to which all colonies, excepting Georgia, responded. The delegates published a "Declaration of Colonial Rights," and agreed upon 14 articles as the basis for an "American Association" to support these rights. This "American Association" was not a regularly instituted Government, but assumed governmental functions by recommendations and advices, and found in all colonies implicit consent and obedience.

This was the beginning of the American Union. The Battle of Lexington hastened the day of meeting of the next Congress in May, 1775. Congress immediately assumed the powers of a General Government with the tacit consent of all colonies. This "government" derived its authority: (1) from its representative character, (2) from the imperious necessity of the times, and (3) from the voluntary obedience to its mandates. Only after all prospect of reconciliation with Great Britain was lost, Congress issued the Declaration of Independence on July 4, 1776.

A Confederation of the "United Colonies of America" was planned at once. This name was soon changed to "The United States of America." But further action was prevented by the military affairs. Not until November 1777 the "Articles of Confederation and Perpetual Union of the United States of America" were agreed to in Congress, and the last of the State legislatures ratified them on March 1, 1781

This document was only a digest of the powers before assumed by Congress. It legalized the bond which had existed before as a free and unspoken submission to the dictates of prudence.

## THE "BILL OF RIGHTS"

Or The First ten Amendments to the Constitution.<sup>24</sup>

In force December 15, 1791.

1. *Amendment.* -- 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.
2. *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.
3. *Amendment.* -- No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
4. *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.
5. *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 offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
6. *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 defence.
7. *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 the common law.
8. *Amendment.* -- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
9. *Amendment.* -- The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
10. *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.

right of the people to abolish it, and to institute a new government founded on such principles. This is the plain statement of the American conception of government, namely, that not a King, not a Parliament, but *The People* are the source of all political power in a truly free nation.

Since July 4, 1776, there are no more subjects in America, but only free and independent citizens.

On April 19, 1775, Paul Revere made his midnight ride. The bitter struggle against British tyranny was waged for over a year for the enforcement of justice and rights. But, from July 4, 1776, on, the Revolution became the means for the purpose to make this American conception of Government the American law, and to drive the Tory conception out of the land forever and ever.

The American conception of government, namely, that the people are the source of all political power, can be expressed in only one word:

### AMERICANISM

This AMERICANISM, written into the Declaration of Independence by Thomas Jefferson, was made effective by George Washington and his Continentals. By them it was written with blood and sacrifice into the American conscience. This Americanism is the great principle, the great idea, the one characteristic, which distinguishes the American from all other nationalities. That is the "Americanism" found in the preamble of the Constitution of the United States, which every citizen should learn by heart. That is the "Americanism" meant by Lincoln, when he said:

**"that Government of the people, by the people, for the people, shall not perish from the earth."**

That is the "Americanism" meant by Theodore Roosevelt, when he said:

**"Americanism is a question of spirit, conviction and purpose -- not of creed or birth-place."**

That is the "Americanism" which Woodrow Wilson meant, when as President of the United States, he addressed a body of New American citizens:

**"You have just taken an oath of allegiance to the United States. Of allegiance to whom? Of allegiance to no one, unless it be God -- certainly not of allegiance to those who temporarily represent this great Government. You have taken an oath of allegiance to a great ideal, to a great body of principles, to a great hope of the human race."**

excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 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.

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

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

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

Sec. 2. The Congress shall have the power to enforce this article by appropriate legislation.

16. *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.

17. *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 legislatures.

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.

#### THE ALLEGED EIGHTEENTH AMENDMENT.

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the

to Parliament. The lords exercise their inherent Right to seat and voice in Parliament. While they are still subjects of the King, they are also a component part of the Parliament by their own right, known as The House of Lords. The Commoners, that is the Common People of England, choose their representatives, the House of Commons, which with the House of Lords, constitute the Parliament at Westminster, the source of all political power in England, and the actual ruler of the English people. Thus the English people are not only subjects of their King, but also subjects of their parliament.

This is a most ingenious combination of Monarchy, Aristocracy and Democracy. The only single word of the English language which fully expresses this conception of government, is

### Toryism<sup>2</sup>

The Britishers are satisfied with this arrangement. The House of Commons is (on the surface) the most powerful part of the government and it is to be hoped that the People will always be able to cope with the lurking dangers of this system.

## THE AMERICAN CONCEPTION OF GOVERNMENT

The Declaration of Independence (July 4, 1776) is the Foundation of Constitutional Government in America.

The first colonists were legally subjects of the King of England, and fully recognized this condition. They were entitled to all privileges given British subjects by the Magna Charta, and all the Rights enumerated in the British Declaration of Rights. Coming to the New World they built up thirteen different colonies. Each of these colonies was, to all intents and purposes, a distinct Nation, each nation receiving its charter from the British Crown, and governing itself according to their own will -- always under British supremacy. They were distinctly independent of each other. The only thing they had in common, was that they were all subjects of the King of England and his parliament.

When (1754) the British Government expected war with France, it recommended the Colonies to form a Union for defense. Seven of the Colonies sent delegates to Albany. Benjamin Franklin drew a plan of Union, but Connecticut rejected it as giving too much power to the English government and parliament rejected as giving too many rights to the Colonies.

Nevertheless the Colonies fought the War of England against France on American soil. They drove the French out of all their possessions in Canada and made that province safe for England. The

## Appendix V.

### AUTHOR'S EXPLANATORY NOTES TO TEXT.

(1) An early definition of the representation privilege of the Commoners became a common proverb: "what a parliament is, tells this poem -- 'Come, vote taxes, -- and skip home.'"

(2) "Toryism" involves the recognition of the King by Divine Right and the retention of the existing state of things. Giver that a little serious thought.

(3) The evident similarity between the three plans was later explained by the fact, that a plain Philadelphia citizen, Pelatiah Webster, had long before the convention written and published a "Dissertation on American Government" and all three statesmen had consciously or unconsciously adopted the main principles of government as laid down in that dissertation. Mr. Webster has been termed the "Architect of the Constitution" and his "Dissertation" has been reprinted as a U. S. Senate Document and can be obtained from the U. S. Commissioner of Documents.

(4) The term "The United States" in the Federal sense is *plural*, for instance, "The United States *are* strong." By the ratification of the proposed Preamble to the Constitution, the People of these United States, in conventions assembled, constituted themselves *one* Nation called "The United States of America.," a *singular*, for instance: "The United States *is* strong." The latter is the correct and official expression.

(5) The term "Conventions" wherever used in the Constitution is equivalent to "The People."

(6) The ratification of Declaratory or Explanatory Amendments by State legislatures is in the nature of an acceptance of the opinion of the Congress. For instance, in the Nineteenth Amendment the Congress proposes, that the right to vote of Citizens of the United States shall not be abridged on account of sex. The basic law of the land holds, that the right to vote is inherent in citizenship. The states have the right to make election laws and many of them did not consider women as voters. The Nineteenth Amendment abridged the Rights of the States with their consent and extended the Rights of Women Citizens. The State legislatures were therefore competent to ratify. But if a sufficient number of State legislatures had refused to ratify, then the Congress might have appealed to the people, and again proposed the same Amendment for the Ratification by the Conventions. If a sufficient number of Conventions had then ratified the Amendment, the will of the legislatures would have been overruled. Such are the Checks and Balances in the Constitution. The governments, State or National, are limited, the will of the People is absolute.

(7) There is a contrast between Alexander Hamilton and present-day constitutional lawyers. Hamilton, in reasoning from cause to effect, was able to conclude correctly what would happen for more than a hundred and thirty years to come. Present-day lawyers do not yet know what happened a hundred and thirty years ago, and apparently are too vain to look up the records.

(8) Elbridge Gerry, an exceedingly able citizen of Massachusetts, represented his state in the Convention. He had, however, strong Tory inclinations and finally declined to sign the Constitution when completed. He was a strong supporter of the State Rights.

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

*Enacting Clause of the American Constitution*

## WHAT IS AMERICANISM?

**T**HAT question has been asked quite often, but the term has not yet been satisfactorily defined. Of course we know it must be something that differentiates and distinguishes the "American" from all other Nationalities.

The definitions of "Americanism" given in American Dictionaries, such as Webster's, are generalities and altogether inadequate. Americanism is certainly more than mere attachment to the United States of America. It certainly has another meaning than is found in that of being a custom, word or phrase peculiar to the United States.

Of course, everybody knows, it must be an American characteristic or idea -- but which characteristic, which idea? It ought to be possible to identify this characteristic or idea, which so mightily stirs the soul of every American.

Of all the great nations of the world there are none, who have so many characteristics, ideas, customs, laws, etc. in common as the British and the American. Both of these Nations are the acknowledged champions of Democracy. Nevertheless there is a fundamental difference between British and American conception of government. The American generation of 140 years ago understood this difference in conception of government fully and accurately. But in the flow of time, in the gigantic work of building a Nation, in the heroic efforts of civilizing a continent, in the strenuous labor of developing the resources of the land, the American consciousness of this difference in conception of government has become dormant. The feeling of national security,

which he can or cannot exercise under the regulation of the State in which he lives. This argument was brilliantly presented, but it does not appeal to the present writer. In reality it is this way: The manufacture, etc., of Beer, Wine, Whiskey, has always been considered a legitimate business. The first Congress of the United States (as a Nation) passed a mild protective tariff law levying a tax on imported Beer, in order to encourage the Brewing Industry of the country. The abuses of the industry or resulting therefrom, were always tempered by National, State, County and Municipal Taxation, and controlled by Police regulation. The exercise of any legitimate business (the pursuit of happiness) is one of the Fundamental Rights of the American Citizen, safeguarded by the Declaration of Independence, which is the Basic Statute of the United States and can never be amended. This Right is definitely fixed by the Constitution and can be surrendered only with the consent of the People themselves, in Conventions assembled.

Such must have been the considerations of the Supreme Court which brought about the fourth conclusion of the Court. (See page 34.) The prohibition of any legitimate business or industry is certainly not within the Police powers of any State legislature, unless the People of that State, in Convention assembled, have made a Constitution for their State giving their State legislature that power. And even that would very likely conflict with the National Constitution of the United States which protects the Rights of the American citizen in every State.

(15) "Amici Curiae" is the plural of "Amicus Curiae" -- friend of the Court -- who is supposed to appear to aid the Court in unraveling the legal intricacies of the case pending. The term is often translated with "friend at Court" -- because these "Amici" generally represent the interests of one or the other of litigants or other clients. In such cases the Court have seldom reason to be proud of their "Amici." Wayne B. Wheeler was such an "Amicus" for the Anti-Saloon League.

(16) Daniel Webster, born in New Hampshire, January 18, 1782, became a lawyer and at the age of 35 years, ranked with the most distinguished Jurists in the country. His celebrated speech, in Congress, on the Greek Revolution, established his reputation as one of the first statesmen of the age. His activities and his fame encompassed the world.

(17) The second section of the Eighteenth Amendment is a unicum and an absurdity in Constitutional legislation. The American Constitution embraces two distinct powers: The National power and the Federal power. The second section creates a third power, namely a Hyphenated power, which plainly spoken, is a bastard power. The second section instead of giving a new power to the States, emasculates the States. This is a part of the "greatest piece of constructive legislation" by the Anti-Saloon League. The Volstead Act depends for its constitutionality on this Section.

(18) James Madison, born in Virginia, 1751, entered Princeton College. Was sent to the General Assembly in 1776, for six years from 1779 to 1785, was a member of the Continental Congress, was a member of the Constitutional Convention at Philadelphia, and wrote the Virginia Plan, which was presented by Mr. Randolph, and became the foundation upon which the Constitution was built. In 1809 he was elected President of the United States. Served two full terms. After retirement became Rector of the University of Virginia. He was a contributor to the "Federalist." His report on the debates in the Constitutional Convention has been accepted as a political text-book of great value, and published by the government. Died 1836.

# CITIZENS OF AMERICA! AWAKE!

*It is Time to Re-light the Lamp of Paul Revere*

## THE AUTHOR'S VIEWPOINT

**T**HE author of this pamphlet is not a constitutional lawyer. He is just a plain American Citizen, with the average amount of common sense, the ability to think straight and the honest endeavor to act straight with all his fellow-men.

I love the Declaration of Independence and the American Constitution. A lifelong study of both these documents, and a comparison of the same with all forms of government from Plato to the new governments of Europe, has only increased my admiration for both these magnificent exponents of American statecraft.

Also, I am a firm believer in the old adage, that Law is Reason, and where there is no Reason there is no Law. Also, that as Cicero said a hundred years before Christ: "An Extreme Law is Extreme Injustice."

Whiskey, Wine, Beer, does not enter into this discussion. An advocate of temperateness in all things, I consider Temperance a constructive virtue. I reject Prohibition, because Prohibition is Extreme Intemperance, and as such destructive and vilely immoral.

The sources of my information on the subject of the Constitution are unimpeachable: They are the Documentary History of the Constitution, published by the government, Elliott's Debates, Bancroft's Footprints of the Times and Analysis of Our Government, U.S. Supreme Court Reports, Biographical Annals of our Government. Also the exhaustive book on "Citizen or Subject" by Francis X. Hennessy, an eminent member of the New York bar. This book ought to be in every library of the land for the reading of the millions of citizens, who cannot afford and do not buy such books.

Twelfth Year of the Independence of the United States. It was ratified by the people, in conventions assembled in their respective States (the only agency competent to ratify), and became a fact by the Ratification of the Ninth State (New Hampshire), on June 21, 1788, and went into operation on March 4, 1789.

(23) This clause of the Constitution, within the brackets has been superceded and annulled by the Twelfth Amendment.

(24) It is proper to state, that *twelve* Articles of Amendments were proposed by the first Congress, of which but ten were ratified -- the first and second in order received not the requisite number of three-fourths of the States. The First Amendment was concerned with the number of Representatives in Congress; the second with the compensations of United States Senators and Representatives. They were therefore immaterial and their rejection wise. Thus the Third Amendment proposed became the first article of the Bill of Rights, etc. It is also interesting to know that Rhode Island, the same State, whose great lawyer asserted in the National Prohibition Cases, that the Eighteenth Amendment could not be made constitutionally, was the only State, who did not ratify the present *Ninth* Article of the Bill of Rights. Please read that *Ninth* Article again.

[Transcriber's Note: The Second Article addressing compensation of United States Senators and Representatives was ratified in 1992 as the Twenty-seventh Amendment.]

# THE CONSTITUTIONAL RIGHTS *Of the People of America*

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## A Short Review of the History of the American Constitution and A Negation of the Eighteenth Amendment

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*By a Plain American Citizen.*

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## ***Fellow Citizen:--***

**W**HEN, in the course of your citizenship, you accept an office as lawmaker, as judge or in any other capacity, from the exalted office of the President to the lowly office of a notary-public in the crossroads hamlet, your oath of office contains these words:

*"I will, to the best of my ability, preserve, protect and defend the Constitution of the United States."*

This, in itself, implies a thorough study and understanding of the Constitution. At a time, when there are many agencies at work to undermine and to subvert the constitutional theory of the United States, this task is not easy.

To aid in this study of the Constitution, and to set forth its most salient principle, namely, that in the United States of America the power of governments is limited and the will of the people is absolute, this booklet has been written. It will be of value to you. Talk it over with your neighbors.

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## Transcriber's Preface

This pamphlet was written more than 75 years ago and addresses one of the most interesting questions of Constitutional Law -- To Wit:

**Are there limits to the power to alter the Constitution by Amendment proposed by Congress and ratified by State legislatures?**

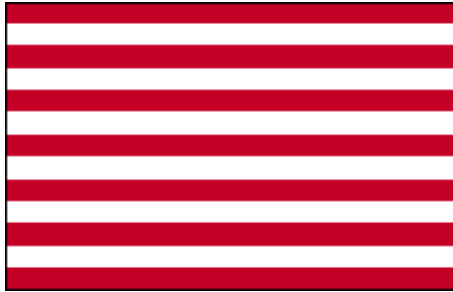
This question is discussed in a lucid fashion by the pamphlet's author in the context of the Eighteenth Amendment to the Constitution which brought the prohibition of alcohol to the United States in 1919. The mooting of this question by a repeal of the Eighteenth Amendment does not invalidate the question about limits, nor should it diminish interest by Americans in the answer. The author clearly opposes the Eighteenth Amendment and argues that it was different in kind from the prior amendments in that it affected the liberty of the people of the United States whereas the previous 17 amendments did not. If the Federal Congress and State legislatures could agree to an amendment affecting liberty, then Constitution protects American liberty only by the difficulty of the amendment process.

The author explores whether the Constitution itself protected liberty in a way that Federal and State governments could not legitimately overcome. For if these governments could cooperate to prevent consumption of alcohol, they could cooperate to eliminate trial by jury, or Supreme Court review of legislation, or any other essential right possessed by an American Citizen or to alter powers delegated by them. Given the ever more intrusive Federal government, this question has more significance today than in 1924 when this pamphlet was written.

The author explains carefully the differences in the American concepts of government and the British concepts which preceded it in America. Today we see British or Tory concepts again intruding into the popular concepts of government in the United States. We hear frequently the Tory concept that citizen rights derive from a higher authority. In Britain that higher authority is the Crown. The Crown and parliament, which exercises the Crown's authority in Britain, grants rights to subjects. However, such a grant from the Crown can be withdrawn by parliament (and has been recently -- for example in the elimination of the right to keep silent in interrogations).

Today, in the United States, we hear many talk of Constitutional Rights to mean citizen's rights conveyed by the Constitution. However, to assert that the Constitution conveys rights is a Tory concept that the people do obtain their rights from a higher authority. In the American

**Complements of Maryland Citizens for  
the Right to Keep and Bear Arms.**



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