

THE
CONSTITUTIONAL
RIGHTS
*Of the People of
America*

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 mooted 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 However, such a grant from the Crown can be withdrawn by parliament (and has been recently -- for example in the elimination of the right to keep silent in interrogations).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

concept of government, which this author explains so well, it is clear that the Constitution conveys power to government and asserts rights that the American citizens possess already. That is, American citizens' rights pre-exist the Constitution and are more than only the specific rights asserted within the Constitution. So, in the American concept of government, the Constitution does not convey rights, nor are these rights defined solely by the Constitution.

The pamphlet's author explores whether the Constitution of the United States would permit governments (Federal and State) to determine or alter the rights of the people. The author also presents the legal and historical references for his study which should permit the accuracy of his assertions to be checked. Whether his arguments are correct is beyond the capability of this transcriber to determine, but the concepts presented are worthy of study; and the author is clearly an educated man and well versed in American Law and History.

This pamphlet was transcribed into a form that could be made available on the internet in the hopes that this author's assertions become widely accepted because popular acceptance would raise significant barriers to intrusions on American liberty.

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January 2, 2000.

Note: The transcriber attests that he has made a faithful copy of the original pamphlet. Only in a few cases was text deliberately and knowingly altered. In one case, it appeared to the transcriber that a printing error eliminated a few words (perhaps a line of text). The transcriber inserted text in that case to make a complete thought. That text is marked by "[...]" and appears on page 14. In another case, a error in date and page reference was corrected with old numbers lined through and new numbers marked by "[...]". Wherever corrections have been made, they are similarly marked.

In some cases (e.g. the omission of a quote mark on page 37) errors were faithfully reproduced when they did not have any adverse impact on meaning. Also, on page 37 there appears to be text missing (two lines in succession ending in a colon). It was not possible for this case to guess at the author's missing text, so no corrections were made.

The production of this transcription was an manual operation. The transcriber had many opportunities for making errors and he would welcome being notified of any errors.

Fellow Citizen:--

WHEN, 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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THE CONSTITUTIONAL RIGHTS *Of the People of America*

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

By a Plain American Citizen.

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CITIZENS OF AMERICA! AWAKE!

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

THE AUTHOR'S VIEWPOINT

THE 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.

- A great historian says: "A People going to sleep over its liberties is not worthy of the same and will lose them!"
- That is the experience of the world. All history proves that nothing but watchfulness and action can preserve the Rights and Liberties of any People.
- To exercise such watchfulness, it is necessary for the People to fully understand their Constitutional Guarantees.
- Read the condensed story of the events that made you an American Citizen. Read the Constitution of the United States and see to it, that you remain a Free American Citizen.

The purpose of this pamphlet is to help in sweeping away the thick cobwebs, with which a legion of law-spiders in the Courts, in the Newspapers and Magazines, on the Rostrums and in the Pulpits, have beclouded the minds of many liberty-loving citizens of both sexes, regarding our constitution.

In order to understand the Constitution, it is essential to know the purpose of the great convulsions, and the indomitable spirit, which actuated the Americans from 1775 to 1788. Therefore this pamphlet must be read in continuity and not from the middle toward either end, as is nowadays a bad habit with many readers.

In some instances biographical notes and other explanations seemed desirable. In order, not to burden the text, these notes were grouped in an Appendix. The small figures in the text refer to them. The Declaration of Independence, The Constitution of the United States, The Proposal of the Constitution to the People, The Bill of Rights and all other amendments are also appended.

The name of the author is withheld because the same is immaterial. In the modern constitutional discussions great names have been used to destroy the truth. The people must learn, that Names mean *Nothing!* *Truth is All!*

THE AUTHOR

"It is well for the country to have liberality in thought and progress in action, but its greatest asset is common sense The people know the difference between pretense and reality. They want to be told the truth."

(President Coolidge, Aug. 14, 1924)

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?

THAT 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,

the sense of ever-growing strength and material superiority has helped to increase this dormancy. Nevertheless the American conception is not dead, it lives deep in the soul of every *true* American.

THE BRITISH CONCEPTION OF GOVERNMENT

The Magna Charta (1215) is the foundation of constitutional liberties in England. Through this document the Lords, Burgesses and the Commoners forced a Monarchical Ruler to confer and acknowledge certain privileges to be enjoyed by the people under his rule. The charter infers the supremacy of fixed principles of law over the will and power of the monarch.

The Charter is the First Political Act of the United English Nation. It marks the Birth of Freedom of Englishmen in its later form. The power of the King was still paramount. In the beginning the representation privilege was little more than the voting of subsidies.¹ Quite often the commoners felt their impotency and were ready to drop the whole thing, little dreaming of the vast possibilities of the Magna Charta. Seven hundred years of development brought forth the British conception of government.

In England the Crown is still the legal source of Parliamentary authority. The entire House of Lords is the creation of the Crown. The Lords of the Realm rely entirely upon their inherent right of having a seat and a voice in Parliament.

The Commons, however, still adhere to the old custom, and by humble petition to the Crown, at the commencement of every parliament, lay claim to their ancient and undoubted rights and privileges, which, of course, the King graciously re-confers.

Furthermore, the Crown summons the Parliament, and this body cannot legally proceed to business, until the Crown, that is the King in person or by proxy, has declared the causes of the summons.

The meaning of all this is: The King has relinquished the Fact of his rule, but retained the Principle of it.

Step by step, Parliamentary rule in England has developed to that stage, which Lloyd George but recently described as:

"The Parliament at Westminster is the source of all political power in England."

This is of course the correct British conception of government. But let us dissect this from an American point of view:

The King is Ruler of England by Divine Right. His subjects, the Lords and the Commoners have forced the King to confer his actual rule

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

Toryism²

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

skill and bravery of George Washington and his provincial troops saved the British army from entire annihilation in the Pennsylvania wilderness. The colonies bore a large part of the burden of the war by raising \$16,000,000 of the expenses, and they lost 30,000 men in battle and hospital.

Did all this secure for the colonists the privileges and rights conferred by the Magna Charta (1215) and the Declaration of Rights (1689) upon British subjects? Did the King and the Parliament protect their colonial subjects? Not a bit of it! Previously the King had assumed authority to juggle the charters and to change the government of the colonies as the spirit moved him, without the consent of the colonists. The Parliament restricted the colonists' commerce to English ports and laid duties on the various imports. Now Parliament proposed to impose *internal taxes* on them.

That proposal looked to the colonists like an attempt to enslave them. They resisted, respectfully, but determinedly. The British King and the parliament, however, called this resistance "rebellion" and determined to put it down. The struggle continued for ten years with growing obstinacy on both sides, 1764 to 1775.

The war with France had trained the colonists to act in concert; they had the opportunity to learn the art of war. They compared themselves with soldiers from the mother country and of France, and gained confidence in themselves. The following long period of discussion imbued the colonists with common sympathies and ideas. But they never thought of independence during all this preliminary struggle. The colonies were loyal until loyalty meant loss of liberty. They felt it right to resist arbitrary power, after all other means were exhausted. When armies came to subjugate them, and commenced the attack, the people rose in arms to right their wrongs.

Utterly disgusted with the British Conception of Government, the American peoples arose to their first political act, long before they were organized as a Nation, and promulgated the Declaration of Independence.

This document declares that all men are created free and equal (meaning that they are born as human beings, not as aristocrats or commoners or subjects), that they have been endowed by their creator with certain inalienable rights, among them the rights to life, liberty and the pursuit of happiness.

In order to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed. When any form of government becomes destructive to these ends, it is the

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."

That is the "Americanism" which President Coolidge describes in his address, September 25, 1924:

"The Government of the United States is a device for maintaining in perpetuity the rights of the people, with the ultimate extinction of all privileged classes. It is a Constitution which is the product of human experience, with all its toil and suffering, its bloodshed and devastation, its oppression and tyranny, but likewise with all its wisdom, its love of liberty and its determination to follow the truth. We pay too little attention to the reserve power of the people to take care of themselves; we are too solicitous for Government intervention. The Government is limited; only the people are absolute."

The early Americans had learned the lesson, that Parliaments, Congresses and Legislatures can become just as oppressive and tyrannical as the "King by divine Rights," and they safeguarded themselves and their posterity against such tyranny.

In order to visualize the difference in these two conceptions, we might look at them side by side:

TORRYISM

means, that the

People

Notwithstanding the great privileges granted them by the Magna Charta and the Bill of Rights, are still the *subjects* of their

Government.

The British Constitution is unwritten and alterable. The power of Governments is not limited

AMERICANISM

means, that the

Governments

(State or National) notwithstanding the many and great powers granted them by the people are still the creatures of the

People.

The American Constitution is written and unalterable by Governments. The Power of American Government is limited.

True Americanism of the individual therefore is the adherence to and the abiding faith in the American people, that they will forever and ever uphold the fundamental principles of government as laid down in the Declaration of Independence and in the Constitution of the United States of America, both proclaiming the absolute supremacy of the American people over their governments in Nation and States.

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 BIRTH OF THE NATION

Every American was then and has been since July 4, 1776, a free citizen of one of the States (or Nations), but they were not all citizens of one and the same State. The legal status of the individual citizen was exactly the same as in 1776. His individual liberty could be limited only by a law of the legislature of that State (or Nation) in which he held citizenship, and to which he and his fellow-citizen had granted the power to do so. No other legislature of any other state, nor the legislatures of all the other states, nor the Federal Government, created by the States and given Federal grants, could interfere with his human rights, nor could either of them grant any other legislative government the power to do so. That status of the American as a citizen continued for twelve years.

Truly, these were great days from July 4, 1776 to the ratification of peace with Great Britain on January 14, 1783.

Four years later, the common people of the Confederation of the United States of America began to realize the insufficiency (or rather complete failure) of the Confederation for National purposes and the regulation of internal affairs. The legislature of Virginia appointed James Madison and others as Commissioners to confer on the subject with commissioners from other States in Annapolis, September 1786. However, only five States were represented.

The assembled commissioners discussed the subject thoroughly and sent a report of their findings to their own legislatures, and also to the legislatures of the eight absent states and to the Congress. They recommended, that each of the thirteen States should elect commissioners to meet in Philadelphia, May 1787, and consider the status of the Union, and to make and report recommendations, adjusting the federal constitution to the requirements of the Union.

One must keep in mind, that the recommendation to call such a convention was entirely extraordinary and outside of the written laws of that time.

Each of the thirteen States was an independent nation. These nations were united in a Confederation of States. Each nation had its own constitution. The Federation had its Federal constitution. None of these constitutions contained articles, under which such convention could be called. The Federal Constitution contained a provision making the amendment of the constitution possible.

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.

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 unflinching 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.³ Both Hamilton and Pinckney soon became supporters of the Virginia plan prepared by Mr. Madison, and submitted by Mr. Randolph.

The history of Governments offered no sample to copy from, not even guideposts to lean to. To meet the wants and desires of the people, and entirely new system of government had to be invented. The old constitution, the Articles of Confederation, had proved dismally inefficient. The opinions of the delegates differed greatly. There were insistent Federalists and there were outspoken Nationalists. There were a few with Tory inclinations. But all of them were imbued with one great principle: The absolute belief in the freedom of the individual.

In the Declaration of Independence the new Republic had proclaimed its faith in the truth, reality and unchangeableness of freedom. In eight years of war the fathers of the Republic had fought for this freedom. And now, in this Constitutional Convention, the great achievement was to be concluded. As Judge Alton B. Parker once said: "The people in the formative period of our government, were bound to have, and did at last secure, a government, which the people could control, despite their legislatures, whether representing the States or the Federal government."

In dignified labor the representatives of the people, in conventions assembled, secured such a government. Like a golden thread, the insistence on freedom of the individual, on the supremacy of the people over the governments, winds through all the deliberations of the convention. The same golden thread reappears when the people, in conventions assembled, are asked to ratify the work, all acting with one dominant purpose: the Security of Individual Human Freedom.

CHARACTERISTICS OF THE CONSTITUTION

The Constitution of the United States of America obliges the highest citizen to obedience, justice and right, and raises the lowest citizen to an equal share in the political privileges and to its vigorous protection. The respect for *man* and his *rights* is its most significant note.

The protection of the freedom and political liberty of the [American people lies in the fact that their government derives] its powers from the grants of the American people direct. It governs with the consent of the governed.

Unavoidably, by the nature of conditions, the American Constitution had to have a dual character, namely: National and Federal. The National Articles of the Constitution treat with the Government of human beings, of the citizens of America. The Federal Articles treat with the relations of the single States to the Federal Government of the United States.⁴

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.

Among these enumerated grants, is the War power of the Government. Their own experience had proved to the people that American war power, in order to be effective, must not be limited. In case of war, the Constitution is therefore practically suspended. This explains why the Government without a new grant of power could validly enact War Time Prohibition. But when peace came, the Government was not enabled to pass any laws for National prohibition, without a new grant of power from the people. To enact the Volstead Law it was first necessary to amend the Constitution.

The other *National* Powers vested in Congress, and interfering with individual freedom of the citizens, are:

The Power of Taxation.

The Power to regulate Foreign and Interstate Commerce.
(Regulation of commerce within any one State belongs to the State legislature and not the Congress.)

The Power to make Treaties with foreign countries or nations.

As one follows the discussions of these constitutional convention, one finds that Article I, containing these grants of National power, consumed four-fifths of the entire time. The people reluctantly parted with any of the grants and turned them over and over, that no loopholes might creep in. The same condition prevailed in every one of the ratifying conventions of the people. The granting of these few unavoidable powers to interfere with the individual freedom of the citizens was so reluctantly done, as to endanger the final passage of the Constitution. The objection generally was that the constitution endangered individual liberty, because it lacked a Bill of Rights. In all these conventions, the great promoters of the Constitution, Madison of Virginia, Hamilton of New York, Wilson of Pennsylvania, pointed out, that no Bill of Rights is needed in a Constitution, which gives a government no power to interfere with individual rights, except the specific and enumerated powers of the First Article.

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 Alexander Hamilton collaborated. In Madison's original draft, the power to ratify any amendment was vested only in the conventions⁵ 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.⁶

(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

Amendments, as mentioned above in 1 and 2, Madison was induced to insert the ability of State Legislatures in this matter in his Article V of the Constitution.

Hamilton expressed his conviction, that future Amendments to the constitution would for a very long time be of the Federal or Declaratory kind, which the Legislatures can ratify.⁷

The Constitutional Convention and the People, assembled in the different Ratifying Conventions, understood this condition very well. The constitutional convention discussed the Article V thoroughly. It passed the same only after reaching a complete decision as to the difference between the ability of "conventions" and the ability of "State legislatures."

A Tory attempt, made by Gerry of Massachusetts, to strike out the words referring to the "Conventions" which he knew to mean the "American People" was promptly and decisively defeated by a vote of 10 Noes against 1 Aye.⁸

In every convention assembled to ratify the Constitution, we find some of the originators. In Virginia we find Madison. In New York, Hamilton; in Pennsylvania, Wilson; in South Carolina, Pinckney; in Massachusetts, King; all pointing out the supremacy of the "American Citizens" over the Constitution and over the Governments.

THE "BILL OF RIGHTS"

In all these conventions, these men hear and combat the opposition, that the new constitution might endanger the personal liberty of the citizens, because it contained no Bill of Rights. They point out that no Bill of Rights is needed in a Constitution which gives to government *no* power to interfere with individual freedom, except through the enumerated powers of the First Article.

In order to pacify some of the opponents, it was agreed that the first Congress under the New Constitution should at once propose a number of Declaratory Amendments setting forth the Rights of the People.

This was done and brought forth the First Ten Amendments, which, being plainly declaratory, and not endangering the individual liberty of the people, but asserting and securing their rights, belong to the class of Amendments on which three-fourths of the State legislatures are competent to act.

These first ten Amendments are called the American Bill of Rights, which is really a misnomer.⁹ Congress and the State Legislatures can not give the Citizens any *Rights*. The Supreme Court of the United States has time and again decided that each one of the ten Amendments was implied in the original Constitution. However, the Amendments

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:

9th AMENDMENT.

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

10th 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 18th, is concerned with and pertains to the original provisions and powers of the constitution. The same is true of the Nineteenth Amend-

ment, which extends the citizens' rights to vote to women. All of these "Amendments," none of which created a new power to interfere with the rights of the people, the legislatures of the States were constitutionally competent to ratify, and did so ratify.

The people did not need to ratify anything of this sort, because they had ratified the Constitution and all powers to interfere with their human rights and liberties, not enumerated in Article I, were retained by them. Important as these declaratory or explanatory amendments are, they are but the echo of the intentions of the Makers of the Constitution as fixed in that document.

From 1788 to 1917 the individual liberties of the people were not encroached upon by Congress through the proposal of any Constitutional Amendment. The idea as above stated was known to and accepted by all men. It was set forth in many decisions of the U. S. Supreme Court. As late as 1907 [1904] Justice Brewer, of the U. S. Supreme Court in *Turner vs. Williams*, 194 U. S. 289 [279], held:

"The Powers the People haven given to the General government are named in the Constitution, and all not there named, either expressly or by implication, are reserved to the *people* and can be exercised only by *them*, or upon further *grant from them*."

WAR TIME PROHIBITION

And then came the World's War. The necessity of War Time Prohibition for this country has been grossly exaggerated, to create public clamor in times of emergency. But under the extensive war powers of the government granted by the people through the Constitution, the War Time Prohibition Act was and is not debatable.

This sort of legislation is known as Sumptuary Laws, which are the cure-all for the ills of mankind -- in the opinion of every reform fanatic since the world began. Even in the constitutional Convention at Philadelphia, the question was up for discussion.

The writer quotes from Mr. Madison's Notes in *Documentary History of Constitution*, Vol. 2, p. 567:

On August 20, 1787, Mr. Mason moved to enable Congress to enact Sumptuary Laws. -- It was objected to sumptuary laws *, that they were contrary to nature.

Mr. Elseworth said, that, as far as the regulation of eating and drinking can be reasonable, it is provided for in the power of taxation.

Mr. Gouverneur Morris argued, that sumptuary laws tended to create a landed nobility, by fixing in the great landholders and their posterity their present possessions.¹⁰

**Mr. Gerry said: "The law of necessity is the best sumptuary law."
Motion lost by eight Noes against three Ayes.**

[* a law regulating spending with a view to regulating excess in food, dress, equipage, etc.]

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 18th 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.

On April 4, 1917, Senator Shepard, of Texas, introduced Joint Resolution 17, proposing what is now alleged to be the Eighteenth Amendment. The Resolution 17 went to the House of Representatives, where it was passed in a changed wording on December 17, 1917, and resubmitted to the Senate, who pass the proposal in its new form on December 18, 1917.

The so-called Eighteenth Amendment as proposed by the Congress reads as follows:

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 exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.¹²

Section 2. The Congress and the Several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Having kept in mind the advice of Iredell, we look but fail to find in the First Article of the Constitution any grant of power of the kind granted by the 18th Amendment.

We find, that among the human rights of Americans, as of all human beings, is the right to do everything which is forbidden in the first section of the 18th Amendment. It seeks the total elimination and destruction of several legitimate industries and their allied industries, it involves the ruthless confiscation of property of American citizens, it issues a command to the citizens, that they shall not make, sell, transport, export or import, certain commodities, which command involves the control of the appetites of the citizens in what they may eat or drink.

Congress knew, that it had no power to enact any law to achieve any of the encroachments on the rights of the people sought by Section 1. On the part of Congress Section 1 was merely a proposal, and within the rights of Congress. It does not make the article valid. But in order to gain this new power, Congress made two more proposals in Sections 2 and 3.

These again are merely proposals, and have no validity, unless the *proposed Ratifiers* are *competent* to make that particular kind of a grant.

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.¹³

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."

In another decision the Supreme Court says: "The American Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now."

And in still another decision the Supreme Court says: "Beyond the scope of its enumerated powers there is *no* government of the American Citizens."

The great French historian Ch V. Langlois said, and all other historians agree: "History is studied from documents. Documents are the traces which have been left by the thoughts and action of men of former times."

Thomas Carlyle, the great British historian said: "Every great event in history is in the last instance the biography of a man." Read the biographies of the American Constitution makers, of Washington, Madison, Hamilton, Franklin, Edmund Pendleton, and scores of others, and you will know the true meaning of every detail of the American Constitution.

A study of the Proceedings of the Constitutional Convention and of every one of the Conventions of the People, assembled to say "Yes" or "No" to the Constitution, clearly reveals what the Constitution meant when it was adopted. In vain will you search for one word in all these deliberations, showing that the State legislatures were in any form or manner given power to interfere with the human liberties of the newly created American citizen. Every one of the early Americans, who established that constitution of Government, which is the First Article, knew and emphatically declared that it was *unalterable by government*; and every one of them also knew, that the Tory conception of Government, namely, that the People derive their rights and privileges from the legislature, is banished from the United States, and that in this land the governments (State or National) govern only by the consent of the governed, and only with such powers, as have been specifically granted to the governments by the People.

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,¹¹ 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:

"They maintain that the Constitution of the United States has provided no tribunal for the final construction of itself or of the laws or treaties of the Nation, but that this power may be exercised in the last resort by the courts of every state in the Union."

In putting such theories to flight, he said:

"That the United States form, for many and for most important purposes, a single Nation, has not yet been denied. In war we are one people. In making peace we are one people. In all commercial relations we are one and the same people. In many other respects the American people are one. And the Government which is alone capable of controlling and managing their interest in all these respects is the Government of the Union. It is their Government, and in that character they have no other. America has chosen to be, in many respects and to many purposes, a Nation."

In that great judgment we hear not only of the complete supremacy of Federal law, but of the "American people" as the "Nation." In *McCulloch vs. Maryland* (4 Wheat, 316) we hear of "the American Constitution."

In this connection it is of interest to know, that Chief Justice Marshall wrote an elaborate decision (*McCulloch vs. Maryland*, 4 Wheat, 316) in which he explained, *who alone* could make and did make the First Article of the Constitution, and who alone can *ever validly* make Articles like it (for instance the Eighteenth Amendment), namely *the people themselves*, in Conventions assembled. Such articles require not the affirmance of, and could not be negated by the State government.

THE SUPREME COURT AND THE 18TH AMENDMENT

Many American citizens are living under the impression that the Supreme Court of the United States has declared the Eighteenth Amendment to be *constitutional*. Fortunately that is not the case *in the sense in which it is advertised*.

If it be true, then the Declaration of Independence was written in vain, the War of Rebellion against England was fought without purpose. The Fathers of the Republic were not so wise, as history tells they were, and with one stroke of the pen, they annulled what they fought for eight long years with guns and brains. The American Citizen has cease to exist, and has become the Subject of his Governments. Americanism has been defeated and Toryism is re-established.

But, again, fortunately that is not the case. It is only a question of time, when the Supreme Court will declare *that the Eighteenth Amendment is not in the Constitution*.

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.

THE NATIONAL PROHIBITION CASES BEFORE THE SUPREME COURT

The alleged Eighteenth Amendment, proposed by Congress in 1917, was proclaimed as ratified in 1919. It came before the Supreme Court in seven litigations, now known as the "National Prohibition Cases," and reported under that title in 253 U. S. 250 [350]. All these cases dealt either with the validity of the Eighteenth Amendment, or with the meaning of its second section, or with the Volstead Act. All asked for an injunction against enforcement.

The best-known lawyers of the country appeared before the bar. Some represented the power-usurping State Legislatures, who claim they can grant new powers to congress and to themselves to interfere with the human freedom of the American citizen. Others appeared for the State legislatures, who deny that there is any constitutional ability whatsoever to take away from them any powers left to them by the makers of the Constitution, especially not their "Police Power."¹⁴

Also came "Mr. Solicitor-General" of our own government of enumerated powers, bound to have new powers and not caring how it gets them, constitutionally or otherwise. And then some eminent counsel appearing to oppose the destruction of legitimate business, which it was the human right of American citizens to engage in. Also the advocates of that political organization, which is seeking to hide its own gross immorality by accusing the mass of American citizens of being immoral, namely the Anti-Saloon League. Further came those stately jurisconsults who argued and filed briefs as "Amici Curiae"¹⁵ (for the cause of their different clients). Only the party most interested in the outcome of the proceedings, the plain American Citizen, had no such "Amicus." And all the other "Amici Curiae," no matter whether they argued for or against the validity of the Eighteenth Amendment, forgot all about him, he was not in the cast at all.

Supporting the validity of the Eighteenth Amendment appeared thirty-five lawyers. Challenging the validity of the power-usurping law appeared twenty-two lawyers. No wonder that the plain American citizen was stunned by this galaxy of "legal talent."

We are not particularly interested in the contentions of those who sustained the validity, headed by Charles E. Hughes. One must be charitable and acknowledge that these men were spokesmen for their clients and anxious to earn their "retaining fees." Mr. Hughes represented twenty-four of the power-usurping State legislatures, and his brief reads as if he is ashamed of the arguments he makes therein. It has been alleged that only a few months later, in a case regarding the

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:

"We are not at liberty to assume that in and by Article V it was contemplated that they were vesting legislative power without limitation in the Congress and the legislatures of three-fourths of the States. For these reasons and others it is submitted that the adoption of the so-called Eighteenth Amendment by the agents of the people was beyond the amending power of such agents and therefore invalid."

This is true as gospel, excepting one point, namely that the State legislatures, who adopted the Amendment, never were and never can be "the Agents of the People of the United States." They had, in this instance no amending power at all, and therefore the Amendment is invalid.

The Supreme Court did not consider Mr. Root's challenge in their conclusions. There being no written opinion, the reason why can only be guessed at. The author's guess is, because Mr. Root did not show the Supreme Court, in what manner the Eighteenth Amendment could have been proposed and ratified constitutionally.

Mr. Root knew the constitutional amending power as well as anybody. That he did not refer to it directly was because of his firm belief that there was no "Amendment" at all but only vicious sumptuary legislation. He consider it inconceivable that the Court might conclude differently which the Court did.

That Mr. Root knew, is evidenced by another argument which evidently helped the Court to conclude as stated in the fourth conclusion (see page 34) much against the intentions of Mr. Root. He said:

"No doubt an amendment of any sort could be adopted by the same means as were employed in the adoption of the constitution itself. In that manner alone do or can do the people themselves act. But the amending authorities provided for in Article V of the constitution as clearly appears from the debates in the constitutional convention, are only agent of the people and not the people themselves."

Mr. Root again overlooks one thing, namely, that the terminology of the Constitution as well as the instrument itself must be construed in the sense of 1788 and not of 1920. What the terms of the Constitution meant in 1788, that they meant in 1920, and that they mean today.

With due respect to Mr. Root, we submit the opinion of Daniel Webster,¹⁶ who was much closer to the making of the Constitution than the great jurist of the present day. In the ablest of his parliamentary efforts -- his speech in reply to Robert V. Hayne of South Carolina, January 30, 1830, Mr. Webster said:

"This leads us to inquire into the origin of this government, and the source of its power. Whose agent is it? Is it the creature of the

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

reservation of all National Rights and Powers, not specifically granted to the United States, to themselves, namely "The People."

In every one of these "Conventions" who made Article V by ratifying its proposal, this Article V was explained as a constitutional mode of procedure in which may be thereafter exercised, in a constitutional manner, either the limited ability of State Governments to make Articles, *which do not concern themselves with the infringements of individual liberties*, or the unlimited ability of the "Conventions," i.e. the citizens themselves, to make any article.

A very elaborate discussion of many of the legal luminaries took place on the word "concurrent" in the second Section¹⁷ of the amendment. All the great dictionaries, Webster's Unabridged, Standard, Century and other linguistic authorities were placed before the Court to determine the meaning of this one word. It was a battle royal of words. None of the legal lights thought of applying the law of the land to this second section.

(1) The Constitution takes from the States many National and Federal Powers formerly exercised by the government of the United States for the purposes named in the Preamble.

(2) All legislative Powers granted in the constitution, are vested in the Congress of the United States solely. The citizens of America have for National purposes one government only.

(3) The Constitution of the United States does not and cannot give the States nor the people any powers whatsoever, concurrent or otherwise, for the simple reason, that all the powers not delegated to the United States by the Constitution, or prohibited by it to the States, existed and were exercised by the States and by the people before the making of the Constitution, and are specially reserved to the States respectively or to the people.

(4) The people have granted to the United States enumerated powers to interfere with certain of their individual rights for purposes as named in the preamble. Any and all other rights, listed and not listed in the "Bill of Rights" are retained by the people. Any Amendment to the Constitution, which in any form encroaches upon the individual and human rights of the citizen must be ratified by the people themselves, in conventions assembled, because on them such an amendment is to operate and it cannot be binding on them until they have consented thereto.

(5) The Congress therefore has no Power or Right, to grant to the State legislatures the Power, to grant to the Congress and to themselves any Power, concurrent or not concurrent, to interfere with the fundamental Rights of the people.

That is the plain basic law of the country, which louder than all the dictionaries proclaims Section two unconstitutional.

It is deplorable that all the eminent counsel attacking the validity of the Eighteenth Amendment, did this in one and the same line namely in the defense of the *Rights of the States* and the Police power of the same. Evidently these twenty-two barristers had come to an agreement so that they might not interfere with each other in their arguments. That there were more important *Rights* at stake than the *State rights*, namely the *Rights of the People*, did not dawn upon them at all.

For instance, Messrs Levy Mayer and W. M. Bullitt, very eminent counselors, argued in this manner:

"It is a well-known and historical fact, that the Constitution was *ratified by the original States* with the distinct agreement, that the Bill of Rights expounded in the first ten Amendments, would be immediately adopted. The States went into the Union with the understanding that by these amendments the sovereignty of the several States would be *perpetually* preserved against all Federal encroachments, and no sound reason can be advanced for maintaining, that the Ninth and Tenth Amendments did not *forever preserve such sovereignty*. The powers reserved by these amendments are powers reserved from the operation of Article V as well as from the operation of any other article of the Constitution."

Of course, it would be foolish, to accuse such eminent lawyers, that they do not know any better. One glance at the Constitution shows who made it by ratification. It was ratified by the *People* and not by the *States*. Of course, the American citizens assembled in those conventions in their several States. This is what Chief Justice Marshall (who himself was a delegated member of such a convention) says:

"Of consequence when they act, they act *in their States*. But the measures they adopt, do not, on that account, cease to be measures of the people themselves, or become the measures of the State governments. (McCulloch vs. Maryland, 4 Wheat, 316.)"

And secondly, the "Bill of Rights" was not demanded to protect the Rights of the *States*, but the Rights of the *People*. The demand was discussed in several States, but originated in Virginia, and here is the official record of it, as it appears in the documentary evidence:

VIRGINIA

To-wit:

VIDELICET

"That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following:"

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.

The challenges, which brought forth the first and second conclusions, are infantile. Such challenges one expects to hear in a Magistrate's Court, but not in the Supreme court of the United States. They raised questions which were decided by precedent usage or by former decisions of the Supreme Court.

The third challenge is not much better. To apply the Referendum to the Amending to the Constitution, first requires an amendment of Article V, which provides for the amending power. Anyone slightly familiar with parliamentary rule, knows that.

The fourth conclusion negatives the great challenge, upon which Mr. Root, Mr. Rice, Mr. Guthrie and many others, depended to invalidate the Eighteenth Amendment, and which we have discussed at some length.

There is no written decision, which means, that the Court did not elucidate the reasons, which led to their conclusions, and in this the Court acted wisely. There was in fact nothing to elucidate: all the findings were self-evident under the law of the land.

All in all the fifty-seven lawyers in the case have only succeeded in muddling clear waters. A glaring instance of this is shown by Mr. Rice, the eminent counsel from and for Rhode Island. In a really brilliant manner he attacked the constitutionality of the Amendment, but became entangled in his own argument. When Justice Brandeis, from the bench, asked, whether the learned counsel knew of a way in which the Amendment could have been ratified constitutionally, he was compelled to answer "In no way," otherwise he would have destroyed the force of his argument. In this, the author's own conclusion, we are supported by the concurring opinion of Mr. Justice Reynolds, who conveys to us a great deal of hope. Justice Reynolds says:

"I do not dissent from the dispositions of these cases as ordered by the Court. It is impossible now to say with fair certainty what construction should be given to the Eighteenth Amendment. Because of the bewilderment which it creates, a multitude of questions will arise and demand solution here. In the circumstances, I prefer to remain free to consider the questions when they arise."

A complete reading of the Court Report, reveals the astounding fact, that the third section of the Eighteenth Amendment has not been challenged at all and was therefore not at all considered by the court. In this assertion we are supported by the words with which Chief Justice White begins his concurring opinion. He said:

"The Amendment contains three numbered paragraphs or sections, two of which *only* need be noticed."

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:

"It is clearly contemplated that the action of the State in ratifying shall not be by direct vote of the people but by their representatives, and the body or bodies shall be recognized as acting for the States are specifically named.

"A legislature in ratifying an amendment, therefore, derives its power not from the State or the people of the State, but from the people of the United States through the Constitution of the United States."

This is a highly modern interpretation of Article V dressed in clever phrases. But, nevertheless, it is too modern, and in the light of documentary history it is an audacious assumption. It is, moreover, one of the abominable halftruths, with which lawyers delight to hoodwink the Courts and the people.

"Was, then, the American Revolution effected, was American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the People of America should enjoy peace, liberty and safety, but that the governments of the individual States might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of Sovereignty? We have heard of the impious doctrine of the Old World, that the People were made for Kings, not the Kings for the People. Is the same doctrine to be revived in the New, in another form, that the solid happiness of the People is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people, is the supreme subject to be pursued."

No, the above is not taken from the briefs denying the validity of the Eighteenth Amendment. No, it is an outburst of James Madison¹⁸ the man, who wrote the Article V and appears in No. 45 of the "Federalist." Notice must be served on Mr. Solicitor-General that it is *still too early* for politicians to presume on the citizen's forgetfulness.

It is clearly evident from the debates in the Philadelphia Constitutional Convention, and in every one of the Ratifying Conventions of the States, that the words: "Or by conventions in three-fourths thereof" were put in Article V to create a means for the people by which they, and they only, can exercise the rights and powers retained by them in the Constitution, and not to create a Super-Government of subordinate State legislatures over and above the government of the United States, the only National government recognized by the American people as such.

But Mr. Solicitor-General goes still further, calmly telling the Supreme Court, that the Court has no jurisdiction in the matter at all. He continues:

"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.¹⁹ 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 CHALLENGE OF THE AMERICAN CITIZENS AGAINST THE EIGHTEENTH AMENDMENT

(1) We, the People of the United States ordained and established the Constitution of the United States. There was no other power competent to do so. The Power of the People over their own instrument still remains, and can be exercised by the People in exactly the same manner by which the original Constitution was ratified, and thereby ordained and established.

(2) The powers the people have given to the General Government are named in the Constitution, and all not there named either expressly or by implication, are reserved to the people and can be exercised only by them or upon further grant from them. (194 U. S. at 296)

(3) The American Constitution grants no power whatsoever over the American Citizens to the State legislatures. The State legislatures or governments, singly or collectively, are constitutionally incompetent to grant to the Congress and to themselves any powers to interfere with the human freedom of the American people.

(4) The Powers exercised by the Congress under the alleged Eighteenth Amendment, are not among the powers enumerated in the Constitution, and are therefor reserved by the people. The rights and powers retained and reserved by the people logically include the right and the power of the people to exercise the same.

(5) A constitutional mode of procedure of amending the American Constitution in the sense of the Eighteenth Amendment is reserved in Article V, namely by the ratification by the Conventions in three-fourth of the several States. The alternative between the two modes of procedure mentioned in Article V eliminates itself in this case, as the proposal of the other mode is equivalent to a grant of power, not within the constitutional abilities of the Congress and a flagrant encroachment on the Rights of the People.

(6) The action of the Congress and of the State legislatures grossly violates the great principle announced in the Declaration of Independence, the basic Statute of the United States, which can never be repealed or amended, that no government in America can ever have the power to interfere with the human rights of the people without their direct consent.

In view of the above contention it is submitted, that the Eighteenth Amendment has not been constitutionally ratified, and therefore cannot be in the Constitution.

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

greatest American statute, which never can be altered or amended or -- misconstrued, and which is the foundation upon which the Constitution rests.

On the interpretation of laws judges may differ honestly. They may even differ honestly on the interpretation of some parts of the Constitution, but they cannot differ on the fundamentals of the same. They cannot in the slightest degree differ on the unalterable principles of the Declaration of Independence.

The full importance of the encroachments on the liberties and rights of the people by the Eighteenth Amendment, and its enforcement act, the Volstead Law, has not yet come fully to the consciousness of the people. In fact for a long time many people considered the Eighteenth Amendment a huge joke, and the violation of the enforcement act an enjoyable sport. But little by little the viciousness of this degrading piece of legislation dawns upon the people.

The Eighteenth Amendment practically annuls all of the Rights, asserted and secured by the people in the Bill of Rights, if it comes in contact with them through the enforcement act. Read the fourth, fifth, sixth, seventh and eighth Amendment to the Constitution and you will find, that to your own knowledge, the rights therein mentioned, have been violated in innumerable cases through the enforcement of the Volstead Act.

Read and study the Bill of Rights carefully, think of what you know of the enforcement of the Amendment, and you will feel the indignation arise in your soul. And so it is with millions of American citizens, who clean in morals, sober in habits, thought and action, will rise in resentment of the destructive condition with which a horde of hypocrites and sanctimonious imposters have fettered the liberties and destroyed the rights of the American people.

The efforts to modify the so-called Volstead Act, and thus relieve the situation, are well enough in the interim. But that is not sufficient. In time such a relief might be followed by the nullification of the act by silent consent in some States or geographical territories. That is just as bad as the Law itself, and totally incompatible with public morals.

It is the Eighteenth Amendment, every word of it, which must be cleaned out of the Constitution. It is not a question of Intoxicating Liquors, but a question of the Restoration of the Liberties and Rights of the People! And it is a question of Public Morals. Morality and Hypocrisy must not remain identical terms in the American language.

The promotion of the cause of temperance, the abolition of the evils of the liquor traffic, which no sane person denies, can be effected by rational methods of taxation, regulation and control, advancing public and private morals instead of destroying them.

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,

either by original provisions, *or subsequent interpretation*, which ought not to be in it, the people know how to get rid of it. *If an 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."

We conclude with a story of the venerable Dr. Benjamin Franklin, who was a member of the Constitutional Convention at Philadelphia.

In the meeting hall on the wall behind the seat of the President of the convention (George Washington)²¹ was painted a half-sun, rather faultily. When the delegates stepped forward to sign the great work, they congratulated each other. Benjamin Franklin, clasping his neighbor's hand, pointed to the painted sun and said in his quaint way: "During the stress of our deliberations, engulfed by the difficulties of our task, I have wondered and wondered whether that is a rising or a descending Sun. Now I know it: It is a Rising Sun!"

Confident in the integrity of the Supreme Court of the United States we believe: "The Constitution of the United States is still a Rising Sun!"

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.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us, in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy of the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by the Authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be *Free and Independent States*; that they are absolved from all Allegiance to the British Crown, and that all political connection between

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

THE CONSTITUTION OF THE UNITED STATES

(Carefully compared with the Original)

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.

ARTICLE I

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

SEC. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

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

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such Manner as they shall by law Direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole power of Impeachment.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one Vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next meeting of the Legislature, which shall then fill such Vacancies.

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

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.

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

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

SEC. 8. The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

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

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

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

To establish post offices and post roads;

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

To constitute tribunals inferior to the Supreme Court;

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

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

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

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 its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

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

ARTICLE II

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

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

[²³The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not lie an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately chuse by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner chuse the President. But in choosing the President, the votes shall be taken by States, the Representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall chuse from them by ballot the Vice President.]

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

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

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

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

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and

defend the Constitution of the United States."

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

Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

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

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

SEC. 3. New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

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

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

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 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^o. 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*

APPENDIX III.

THE PROPOSAL OF THE CONSTITUTION

to the Conventions of the People of America.

In Convention, Monday, Sept 17, 1787

Present: The States of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved, That the preceding Constitution be laid before the united States in Congress assembled, and that it is the opinion of this Convention, that it afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that such Convention assenting to, and verifying the Same, should give Notice thereof, to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors shall be appointed by the States which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected. That the Electors should meet on the Day fixed for the Election of the President, and should transmit these Votes, certified, signed, sealed, and delivered, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the end Purpose of receiving, opening and counting the Votes for President; and after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the unanimous Votes of the Convention

G Washington Presidt

W Jackson Secretary

THE "BILL OF RIGHTS"

Or The First ten Amendments to the Constitution.²⁴

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.

THE OTHER AMENDMENTS

11. *Amendment.* -- The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

12. *Amendment.* -- The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall chuse immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not chuse a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall chuse the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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

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

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

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State,

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

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

exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

THE WOMEN'S SUFFRAGE AMENDMENT.

[19. *Amendment.* --]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 sex.

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

THE PROPOSED CHILD LABOR AMENDMENT. [Not Ratified]

Section 1. The Congress shall have the power to limit, regulate and prohibit the labor of persons under eighteen years of age.

Sec. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress

[Transcriber's Note: The following Amendments were adopted after publication of the pamphlet in 1924:

20. *Amendment.* -- Section 1. The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified, and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

21. *Amendment.* -- Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

22. *Amendment.* -- Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Sec. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

23. *Amendment.* -- Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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

24. *Amendment.* -- Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or other tax.

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

25. *Amendment.* -- Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Sec. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Sec. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Sec. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

26. *Amendment.* -- Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

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

27. *Amendment.* -- No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of representatives shall have intervened.]

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.

In 1813 he became Vice-president of the United States and died in that office. His motion in the constitutional Convention and *the vote thereon* proves beyond the shadow of a doubt, the intention of the Constitution makers, and the true interpretation of Article V.

(9) The so-called "Bill of Rights," namely the first ten Amendments, is fundamentally different from the British "Bill of Rights." In the latter a Sovereign King *grants* certain rights to his subjects and retains all other rights. In the American "Bill of Rights" a sovereign People *assert and secure* their most essential Rights and retain the others whether asserted or not.

(10) This interesting viewpoint on the matter of sumptuary laws came to Mr. Morris from his thorough knowledge of English law. Under Tory conceptions of Government, Sumptuary Laws are easily worked to that end. Even as late as 1800, the ownership of homes by the commonalty in England was next to impossible. The great proprietors, both rural and urban, had absorbed all real property, wiping out even the common ownership of land once held by the towns and villages. The Magna Charta and the Bill of Rights didn't alleviate this condition.

(11) John Marshall, born in Virginia, 1755, the oldest of 15 children of poor parents. Never entered college but studied law privately and was admitted to the bar. Fought in the Revolutionary war and became Captain. As a member of the Ratifying Convention of Virginia, he produced a deep impression by his logic and eloquence. Became a member of Congress, was offered almost every high position, and declined them all. Served as Secretary of State, one year, and on Jan. 31, 1801, was appointed by President Adams as Chief Justice of the Supreme Court of the United States. As Chief Justice, the most illustrious America ever had, he sat for 34 years in the midst of six associates. For his public service he was ranked by many with Washington. He was the object of universal respect and confidence, and in every particular one of the greatest and best of men. Died in Philadelphia 1836.

(12) After reading the Section 1 of the alleged 18th Amendment, carefully, the Geographical Society ought to offer a handsome prize for locating in the domain of the United States "*all territory subject to the jurisdiction thereof for beverage purposes.*"

There ought to be a law against maltreating the American language in the proposal of a Constitutional Amendment.

(13) State Governments or Legislatures cannot even *propose* an Amendment to the National Constitution. This absolute fact logically proves, how far removed the State Legislatures are from any power regarding a change in the National Constitution. The power to *propose* an amendment was given to Congress as the representative of the American people. But, the makers of the Constitution foresaw, that Amendments might become necessary (for instance, the curbing of any power given to Congress) which Congress might *refuse to propose*. In such and other cases, on the application of the legislatures of two-thirds of the States, the Congress *shall* call a *Convention for proposing* Amendments. This is a check on the Congress. The Legislatures directly cannot override the Congress, but on application of two-thirds of them, the Congress *shall* call a convention of the People for that purpose.

(14) In this particular instance, this "police Power" amounts to this: The State of Rhode Island and others claimed, that the manufacture, sale and transportation, import and export of intoxicating liquors is not a Right of the American Citizen, but a Privilege,

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.

(19) Wm. Goudy, in the North Carolina Convention, spoke on Article I and became quite prophetic:

"Its interest (Art. 1) is a concession of power, on the part of the people, to their rulers. We know, that private interest governs mankind generally. Power belongs originally to the people, but if rulers (all governments) be not well guarded, that power may be usurped from them. People ought to be cautious in giving away power. . . . Power is generally taken from the people by imposing on their understand, or by fetters." (4 Elliott's Deb. 10.)

(20) By ordinary laws, Congress as well as the State Legislatures have attempted such encroachments very often. September 13, 1924, Curtis D. Wilbur, Secretary of the Navy, and former Chief Justice of the California supreme Court (and an honorable temperance advocate) spoke before the California Bar Association, analyzing different attempts to invade fundamental rights of private citizens of America. He said:

"State Courts as well as National Courts have overturned laws that preferred one religion to another, that attempted to invade the educational rights of children, that sought to do away with the right of trial by jury and that tended to permit imprisonment without trial. The injunctive features of the Volstead act and of the red-light abatement acts throughout the country, coupled with the power to impose penalties of imprisonment for a year without trial by jury, are an indication of the possibilities of the legislation when once constitutional restrictions are removed."

"If, under the constitution, it is possible to punish a man for belonging to an organization formed for criminal purposes, what would prevent a hostile legislature making it a crime to belong to a labor union?"

He pleaded earnestly for a return to the sane basic law of the land.

(21) George Washington was President of the Constitutional Convention at Philadelphia. He presided with that wonderful dignity, decorum and impartiality, which today is rarely found in presiding officers. Only once was he heard in the deliberations of the Convention. That was when he rose to put the question on the adoption of the Constitution as a whole. Then he pleaded in a few words for the unanimous consent of the delegates to the proposal. But, when the task was done, and the proposed Constitution was submitted to the people for ratification, began his almost superhuman efforts to convince the people of the different states of the necessity of accepting the work of the Convention. Washington's driving force in the ratification work forms a brilliant page in his history. This work brought its fruit, beginning on December 7, 1787 with the unanimous consent of the citizens of loyal Delaware, and ended with the sullen acceptance by Rhode Island on May 29, 1790. In fact her greed in mulcting the other States in a commercial way, was one of the prime causes of the failure of original Confederation. She was coerced into the Union of the United States by fear of isolation.

(22) The Constitution of the Confederation and Perpetual Union between the States, styled "The United States of America," was made by the States combined therein, and was promulgated November 15, 1777, and in the second year of the Independence of America.

The present Constitution of "The United States," which is a nation, was *proposed* by the Constitutional Convention in Philadelphia with the unanimous consent of the States represented (Rhode Island was not present) on September 17, 1787, and in the

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.]

IF -- after reading this book you feel that you ought to help in taking the Eighteenth Amendment out of the Constitution, do so. A greater knowledge of the problem, as it really is, is most desirable. Let every citizen, Legislators, Senator, Congressmen, Judges included, understand, the People *know* what is going on and there will be action. Send a book to a few of your friends. They will appreciate your thoughtfulness and you will help the cause.

IF

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