MODEL FOR A NEW CONSTITUTION

A MODEL CONSTITUTION FOR A UNITED REPUBLICS OF AMERICA

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PREFACE

After Rexford G. Tugwell's "model constitution" was published in *The Center Magazine* in September, 1970, mail poured into the Center for the Study of Democratic Institutions at a record rate. In less than two weeks more than 200 letters had been received from teachers and students inquiring about availability of the Tugwell materials. In response to continuing evidence that the model constitution and the supporting documents can fill a teaching need in courses in government, political science, social science and law, the Center is making this volume available as the first in a series of college readers to be published in collaboration with James E. Freel & Associates.

It was not surprising that Tugwell's monumental effort should thus be greeted as a pedagogical tool. Chairman Robert M. Hutchins of the Center has recalled that the idea of concentrating the institution's efforts on constitutional issues goes back to its founding more than a decade ago. Some of the most distinguished contemporary teachers participated in the initial planning, among them Eric Goldman, Robert Gordis, Clark Kerr, Jacques Maritain, John Courtney Murray, Reinhold Niebuhr, I. I. Rabi, Robert Redfield, and Clinton Rossiter.

"In these conferences," Hutchins wrote, "the Constitution of the United States was a recurring theme. Although some consultants thought the Constitution

could be interpreted to meet all the new needs it might be expected to serve, others were not prepared to put their full confidence in a Court that had often, it seemed to them, failed to find in the Constitution ways of dealing with issues the founding fathers could not have foreseen. The consultants did not attempt to settle the question whether the United States needs a new constitution. They did agree that the effort to frame one would be a worthwhile undertaking for the Center, although nobody thought for a moment that such a draft would be adopted by the people. The project was begun as soon as the right man appeared to undertake it."

In March, 1932, Rexford Guy Tugwell, then professor of economics at Columbia University, accepted an invitation to join Raymond Moley, professor of government at Columbia's Barnard College, and Adolf A. Berle, Jr. of the Columbia Law School in "putting together some material" for the Governor of New York. The material turned out to be the stuff of which Franklin Delano Roosevelt's first campaign for the presidency was made — and by extension to provide the theoretical base for a watershed period of expansion and change in the American system of government.

From that time forward Tugwell was fated to be a commuter between academia and the world of political affairs. He went on with Roosevelt to serve as Under-Secretary of Agriculture in the time when that department played a key role in the most rigorous social and economic experimentation the country has known. In 1938 he left Washington to put his theories to an urban test as chairman and head of the planning department of the New York City Planning Commission. In 1942 Roosevelt called him back to federal service in Puerto Rico as a colonial governor bent on

preparing the island for home rule. As a member of the Caribbean Commission he witnessed the end of the imperial era as it came about in the tropical outposts of Britain, France, and the Netherlands.

But the campus was always in the background, and he returned to it when he could, adding scholarly pursuits that now took him outside his old economic discipline. Briefly he was chancellor of the University of Puerto Rico; the London School of Economics listed him as visiting professor of political science; and at the University of Chicago from 1946 to 1952 he was director of a planning program which served as interdisciplinary incubator for many of the most notable contemporary planners. He has been given high recognition as an historian by award of the Bancroft Prize in 1968.

By the time he joined the Center for the Study of Democratic Institutions in 1964 Tugwell had decided to embark upon a systematic effort to distill the essence from his half century of theoretical study and government practice. His point of departure was the conviction "that the institutions we now possess were hammered out and struggled over by our predecessors as well as ourselves; that the customs and loyalties we still honor and try to preserve, and the rights we enjoy, were won for us in battles now almost forgotten; that all of these were created for us as much as by us . . . I thought some search on my part might turn up some causes of the effects that now seemed so formidable and might even be leading to disasters of vast magnitude." He agreed with Chairman Hutchins and the Center Fellows that such a summing up was compatible with the effort to devise a model constitution intended to fit the conditions for existence of the American republic in the last third of the Twentieth Century.

The main lines of Tugwell's political theory go back to his graduate studies at the University of Pennsylvania's Wharton School. He emerged from that training ground for business executives a dedicated progressive, but he had apparently brought the controlling impulse with him when he came. Such economic innovators as Simon Nelson Patten of the Wharton faculty introduced him to the institutionalist doctrines he would spend his life refining and defending, but he believes now that as far back as his high-school days in Buffalo he had begun to sense "the developing dichotomy between science and society." In the autobiographical sketch of his boyhood, *The Light of Other Days,* he defines the conviction imparted by this discovery:

"It seems to me to have been this: that those who believed in free enterprise and atomized government must use as operative mechanisms deliberate divisiveness, competition, the pursuit of self-interest, the exploitation of other individuals, and the private appropriation of natural materials and forces. These were, of course, a majority, and, being a majority, they prevented the politico-economic expression of the opposite — that is to say, coöperation, integration, loyalty to a whole, and guidance by a concept of public rather than private interest."

Thus Tugwell was early convinced that the laissez-faire doctrines bequeathed by the American founding fathers had become inoperable in the transition from the agrarian society of the eighteenth century to the predominantly urban culture in which he now identified the locus of power. His first major work was entitled *Industry's Coming of Age,* and when he joined Roosevelt in 1932 he had just sent to press *The Industrial Discipline and the Governmental Arts.*

Here he parted company with the trust-busters and

money theorists who claimed the progressive cachet, particularly those on the Democratic side. The solution to the country's cyclical economic ills, he insisted, lay not in atomization through induced competition and the curbing of malefactors of great wealth, but in government action to produce a concert of interests; the government should not abhor industrial and commercial combines because they might be monopolistic, but should encourage them under controls that would guarantee that the public shared fully in the benefits of increased efficiency.

In the course of his career Tugwell approached the practical problems of government as a collectivist, and he made no effort to gloss over the implications of his stance when enemies of the New Deal sought to give it Marxist overtones in a fashion that compounded his personal anguish with a good deal of professional damage. Bernard Sternsher in *Rexford Tugwell and the New Deal* notes: "The professors . . . were the targets of scorn and calumny from the opposition press, and Rexford Guy Tugwell was the bull's-eye of the lot. Tugwell's ideas on 'planned capitalism' would have been the subject of dispute in any case. They became especially controversial when, in June, 1933, the press began a deliberate, concerted campaign to ruin his reputation in order to defeat a pure food and drug proposal — the so-called Tugwell Bill."

After plowing through this voluminous catalog of calumny Sternsher concluded that it was one-hundred-per-cent travesty — that in fact Tugwell had consistently and specifically rejected the enforced regimentation of doctrinaire socialism, and had based all his proposals for change on the liberal reformist position he affirmed when he opened his 1933 work on *The Industrial Discipline* with this quotation from

Francis Amasa Walker: "Happy is that people, and proud may they be, who can enlarge their franchises and perfect their political forms without bloodshed or threat of violence, the long debate of reason resulting in the glad consent of all."

None of this made any perceptible dent in Tugwell's conviction that traditional representative democracy not only is compatible with government planning, but, indeed, may not survive without it. He contends that the doctrine of competition which afflicts the economic sector has produced equally baleful results in American government, where it is manifest as constitutional checks and balances. The result has been to divide authority and responsibility so as to stalemate creative action and preclude accountability; to promote sectional and other special interests at the expense of national concerns; and in general to rob the government of the flexibility required to anticipate and meet the legitimate demands of the people. A concert of interests is needed here, too, he insists, and he entertains no doubt that it can be had without jeopardizing the individual rights of citizens.

Just as it was at the Wharton School half a century ago, Tugwell's attention continues to be fixed only incidentally on the weakness, the ideological bent, and the occasional perfidy of those who occupy the places of power; his enduring concern is with the institutions, the systems, and the processes that shape and limit their actions. This, of course, is the basis of his model constitution, which appears in this volume in the draft he labeled Version XXXVII. The progression of the work reflects not only his own prodigious scholarship, but the continuing suggestions and criticisms of his Fellows and Associates at the Center. In addition, dozens of political scientists and constitu-

tional experts have addressed themselves to the various drafts over the years, and a somewhat larger number of scholars and generalists, as they passed through the Center, have had a go at the fundamentals in one way or another.

The prescriptions and proscriptions of a constitution possibly adequate for a modern democratic republic of continental size and global responsibility do not, of course, spring full-blown from an intermittent dialogue. In Santa Barbara, as in Philadelphia nearly two centuries ago, the underlying constitutional theory has been developed in a series of extended essays. Taking tone and style from the Federalist Papers, the documents deal with such constitutional fundamentals as: The Separation of Powers; and, Parts and Whole: States and Nation. These are too voluminous to be included here; the issues they deal with are summarized in Tugwell's introductory essay.

The Tugwell model constitution has stirred up considerable controversy since its publication. To some the suggestion that the document brought forth in Philadelphia in 1789 may have become out-dated smacks of heresy. Felix Belair observed in the New York *Times* that many conservatives would look upon the Tugwell exercise as akin to that of redecorating a cathedral. And the Left radicals, of course, reject any concept of constitutional reform as a diversionary effort to coopt the revolutionary drive for systemic change.

Some of the young crusaders who come to the Center's table fresh from their own abrasive confrontations have shown disdain for a theoretical exercise that ascribes relevance to the past and assumes continuity into the future. Tugwell applauds the moral passion of his critics, makes no claim of his own to

revelation, and agrees that his proposals may be too little and too late. Sometimes the unbridled utopianism of the current mode causes him to snort and throw up his hands, but he does not denigrate the complaints of the outraged young. Their battle cry, after all, is an echo of his description of his own schooling: "The truth was that the education of the texts no longer explained the world we would find when we graduated. They did little more than elaborate and defend the myths which were growing further and further away from reality."

No prudent man of Tugwell's experience would contend that constitutional revision has much practical chance under any circumstances; in the extraordinary condition that prevails he must concede that principles of governance rooted in a concept of orderly change may well be fated to give way before the demands of those who profess to have caught sight of the apocalypse. If this turns out to be the case, he will have to plead guilty to wasting his latter years. If it doesn't, Rexford Guy Tugwell may have performed the most enduring of his public services by mounting an incomparably informed argument that the existing Constitution no longer works in practice. At the least he has redeemed his license as a pedagogue by stating his case in a form that demonstrates, point by point, why he has concluded this is so — and suggests, point by point, the directions in which we must move if we are to make our national charter again consonant with the times.

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INTRODUCTION TO A CONSTITUTION FOR A UNITED REPUBLICS OF AMERICA

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There were several reasons for beginning a study of the Constitution at the Center for the Study of Democratic Institutions, and, finally, for drafting successive models to focus more sharply the suggested alternatives for revision.

The first of these was that a precious symbol had become largely a myth and myths are easily exposed. The deep feeling Americans have always had for the Constitution ought not to be betrayed. It was no longer often read but was fiercely defended. What many people thought was there, was not there at all; it was in opinions of the Supreme Court, and the Court occasionally reversed itself, thus making what is constitutional subject to change. This seemed likely to destroy the usefulness of the document.

Sooner or later the magisterial attitude of the Court would be such that basic law would lose the authority it ought to have; and, long before that, it

would have been discovered that actually there was no basic law standing above all other laws, impervious to attack, and impervious to alteration except by the people themselves.

A constitution must be the expression of the principles a democracy relies on. It must define citizens' relations with each other and with their collective associations. It must state clearly what they have agreed they can and cannot do. In this it has the same purpose as the Ten Commandments. For instance, men are told that they should not steal. The Constitution goes on to say that if they do steal they must be punished, but that their guilt must be fairly proven and the penalty must be neither cruel nor unusual. So with all the duties and rights.

But a constitution should go further. It should establish the devices needed for living together — for self-government. Prohibiting sins is much simpler than saying how they may be avoided. It is far simpler than establishing such just relationships that there will be no excuse for sinners. The rules for getting along with one another are difficult enough to work out in primitive conditions; the difficulty becomes infinitely worse as population grows and as spaces contract. There is more temptation to break rules and less fear that there will be penalty. It is easier to escape penalties by fading into a crowd.

The framers, meeting in Philadelphia in the summer of 1787, were there because neither the Ten Commandments nor the going rules for social behavior were any longer adequate. It was not enough to have town meetings and local constables or even to have states where delegates were sent to make laws and where courts were set up to judge whether the laws had been obeyed. As a people beginning to regard themselves as a nation, they would not sur-

vive, much less prosper, unless they formed, as it was put in the delegates' instructions, "a more perfect union."

Everyone could see that, but there were many who resented the necessity. The independent American did not really want union. He wanted to find a way of getting the benefits of union without any of the compulsions and disciplines it involved. But this was precisely what had been tried under the Articles of Confederation. It had been in effect for six years and it was a complete failure. Even the most reluctant politicians were compelled to admit that closer bonds were necessary if the nation was to be preserved. They must pay dues and accept duties if the states were not to become a group of small governments, strung along the seaboard, vulnerable to hostile forces on every border, and with no common means of defense.

The problem was to keep the independence so much valued but to give up enough of it to prevent the nation's destruction from outside by Britain, France, or Spain, all plainly covetous of American territory. Then there was the threat from inside by those who would not recognize their obligations to others and continuously sought to give little and get much. Unless those obligations were agreed to by all, and enforced by agencies established by all, nationhood would never become actual; and as separate states they might not even survive.

II

It was one of the oldest of human problems — to persuade or compel those who would take advantage

of others to coöperate and contribute rather than undercut and withhold. This had now become a problem not only of individuals but of the states gradually shaped out of the British colonies over more than one hundred and fifty years. After the successful rebellion they had agreed to support a central government but each had been altogether too willing to let others assume the essential obligations. Especially they would not pay their agreed contributions and would not recognize common rules for commerce. The old government, set up by the Articles of Confederation after the rebellion, was dead when the meeting opened in Philadelphia.

During the summer of discussions the representatives of most states gave up as little as they could to get the protection they needed. They insisted on keeping most of their sovereignty and delegated to the central government enough powers, as they thought, to collect taxes, to make common rules about trade, to fix a common currency, and to provide for a common defense. For these limited purposes they had to establish a government, and, however reluctantly, this was what they did. It was not the first time a people had found themselves in such a situation; but it was the first time a people had done it for themselves, trying to give up as few of their individual liberties and their states' rights as possible, but providing for the essentials of union.

When it is said that the delegates were reluctant it must be understood that there were some who regarded the need for a national government very differently. Washington and Hamilton, together with a dozen others, had no strong state loyalties, or, if they did, were willing to see the nation put first. Hamilton would have liked a monarchy and said so; but his was not a voice much listened to. Washington

and the lawyers who had studied political philosophy were attracted to the federal idea. They believed that dual sovereignty was practical and certainly it offered a compromise between the extreme positions of the states' righters and the nationalists.

This was the outcome: the states were principals who delegated certain powers to a central government — the ones necessary to hold the nation together without too much constriction.

Most of the delegates felt strongly that supreme authority must not be allowed to lodge anywhere in the central government. If it did, they would have created another monarchy or perhaps an autocracy, and they had only recently escaped from being colonies in an empire. It was for this reason that they accepted the suggestions of the political philosophers they knew about — Montesquieu and Locke, most importantly — and provided for three separate branches, each with stated powers, but each dependent on the others for the completion of whatever it undertook. There was a legislature to make laws; but they might either be vetoed by the President or judged by the Court to be discordant with the Constitution. The President was to see that the laws were faithfully executed but he could do only what the Congress would pay for; moreover, even his appointments and the treaties he negotiated with foreign nations had to be agreed to by the Senate. The Supreme Court could say that laws or executive actions were unconstitutional; but the Justices were appointed by the President and had to be confirmed by the Senate; and the Congress could determine its jurisdiction.

All three branches must, in effect, agree before anything important could be done; if any balked, no action could be taken.

These provisions, however, only provided the national government's internal structure and regulated its own behavior. There was a much more serious limitation. Being sovereign, the states retained all the powers not specifically granted to the federal government. What was yielded was the responsibility for defense, the control of interstate commerce, and, according to strict constructionists, little else. The police powers and the rules for all individual and associational relationships were kept by the states — and this was meant literally. To the nationalists this seemed an impossible limitation. The granted powers were very few and obviously insufficient for the purposes stated in the preamble. They were called loose constructionists because they believed this. They took the view that powers granted were expansible at need; what the government was required to do as a nation it must have the implied power to do. For instance, roads and canals crossing state boundaries, as well as other public works, *must* be built and therefore *could* be built.

The framers had been divided on this issue of strict or loose construction from the very first; and some delegates had left the convention when they concluded that the states' powers were likely to be lessened. This was the issue most debated at the ratifying conventions during the next two years. Most of these meetings produced very close votes and it was evident that, although the nationalists prevailed, there was formidable dissent. States' rights were still more important to this large minority than the advantages of union. The nation began its life thus divided.

Luckily Washington, the first President, was a wise and moderate man and also the most honored and trusted leader in the nation. It was he, more

than any other, who set the government on its course, held it together, and showed that if union required some sacrifices they were not unbearable. The Washington style persists even now.

Nevertheless, the issue of states' rights as against national necessities divided the country all during its early years. Adams, succeeding Washington, was a more determined and much less persuasive nationalist; and Jefferson, who had organized those who had local views, defeated him when he ran for reelection. Jefferson meant to make union a mere convenience for the states; he disagreed with Washington so sharply that he left the cabinet and organized an opposition that became the first political party.

All the same, when Jefferson became President he found that he had to act much as Washington had. The nation's requirements had to come first. His successors, Madison and Monroe, found the same discrepancy between their preconceptions and the realities of office.

The proponents of states' rights persisted, however, and it was the issue that precipitated the Civil War half a century later. Even then, although the forces of union won, many people's minds were not changed. Long after the war, state politicians were opposing federal encroachments on their powers and appealing to Americans with the attractive slogans of "independence, monstrous bureaucracy, and local control." It was geography and technology that defeated them finally. Neither commerce nor its facilities respected state lines. Gradually the union assumed more responsibilities and the states were subordinated; but there were compromises all along and only reluctant consent. Often the federal government raised the money and the states spent it; but the central controls inevitably grew stronger.

The Court contributed by expanding the meaning of the commerce clause of the Constitution and limiting the states' treatment of individuals by interpreting the freedoms enumerated in the Bill of Rights. Eventually the Congress approved immense programs of public works, established a regulatory system for industries affected with a public interest, and set up a welfare system intended to be a universal protection from want. The President, with a duty to execute the laws, began to initiate them and, when he could, coerced a hesitant Congress to pass them. He also expanded his powers as Commander-in-Chief until he used the armed forces almost wherever and whenever he felt it necessary. Especially in emergencies of all sorts — and they became more numerous and more dangerous as time passed — only the President could act promptly; and since he was expected to act he did so.

So it was that all three branches escaped the confines of the Constitution even if liberally interpreted. The federal government, as a whole, escaped as well from the constriction of specified powers. The basic law, first made for the people, and ratified by them, was rewritten again and again by extension, by interpretation, and, in emergency, by simply ignoring its limitations. It no longer described the government that really existed and no longer defined the people's relationships among each other. The Constitution, referred to so fondly by earnest patriots, no longer really existed. It was by way of becoming something only to be understood by studying opinions of the Supreme Court.

III

Was this good? Obviously the framers had not intended their Constitution to be thus elasticized.

They had meant it, just as it stood, to be a common rule and a prescription for government. It was that no longer. True, it had been amended; and amendment was the legitimate way to make changes. All the other ways might, as lawyers argued, "bring the Constitution up to date," and might "make it relevant to the present," but this did not respect the constitutional process, recognizing its difference from statutory law. It actually degraded it, because the changes were made by an appointed body in no sense representative of the people; and a constitution is not legitimate unless it is a people's document — not a statute, not a court opinion, but a conclusion reached by the people and ratified by them. Otherwise it was a mockery to begin the document with the words: "We the people...."

None of the actual amendments had affected the powers of Congress, President, or Court; and none had modified the sovereignty of the states; and these were the two most persistent national issues. Both the distribution of powers and federal relationships had been so changed as to be unrecognizable; and it had been done mostly by processes remote from popular participation. There were those who defended these processes vehemently as a practical way of making changes without seeming to — that is, by not disturbing loyalties. If the meaning of constitutional phrases had changed, this, in their view, was all right. The Supreme Court had made the Constitution something it had not been originally, but the Supreme Court could be substituted for the document

and its aura of magisterial perfection would serve the same purpose.

This comes close to saying that no constitution is needed. But those who support this kind of change would be the last to say that the nation could get along very well without one. In many crises and through many divisive periods the constitutional idea — the idea of a law above all laws — has served to remind citizens of their duties and to hold government to its prescribed course. The more it has been attenuated the less this has been true; but the source of the weakness is seldom identified. It is that a constitution no longer a legitimate representation of the people's will cannot create loyalty to institutions.

There were those who thought this dissolution dangerous — because the people had not acted — and likely to lead to disrespect when the Court's changes were challenged as they were sure to be; or when it became common knowledge that many decisions were made by a five-to-four majority — thus exposing the fallacy of judicial infallibility; or, again, when it was recalled that Presidents frankly used their appointive power to select justices who shared their political views. The Court was not above politics; it was not really magisterial. It was not a constitution-making body.

No, revision, approved by the people, was better; it was even essential; but the framers had made it extremely difficult. It had been wholly entrusted to legislatures, that is to say, it was to be initiated by a two-thirds vote of both houses and had to be ratified by three-quarters of the states' legislatures. The other branches were not involved; and the people were left out. It would be unlikely that legislatures would ever be reformed in such a process, and, in fact, none ever has been. Considering that the legislatures are the

branch most in need of drastic overhaul, this is now seen as a mistake with enormous consequences. It ought to be the first change made in a reconsidered constitution.

Escape from the confines of an essentially unalterable constitution was bound to weaken, if it did not destroy, its most essential use: the furnishing of a *lex supra leges,* a law above laws. If it was meant to be something representing the people's will, expressing their deepest convictions in their considering moments, it was that no longer. It was interpreted to allow the establishing, and the enormous growth, of many presently existing institutions without any constitutional authorizations whatever — such as the massive regulatory system. There are many public activities not contemplated in any of the Constitution's clauses — education, social insurance, and the
22 system of national highways, to name a few. Political parties were not only not spoken of but would have been forbidden by the framers if they had foreseen their development. And no planning was provided for, apparently on the supposition that all the planning necessary would be done by the House of Representatives in the course of making appropriations. This might have been reasonable in 1787. It was not reasonable after industrialization set in.

To consider another complete omission, the origin of national administrations now is in political activities not authorized in the Constitution; and they operate through institutions not recognized in any of its clauses. The authority for them has been extrapolated, sometimes without any constitutional reference. This, like other extensions, is elaborately justified by legal theorists who speak of a "living constitution." What they mean is that the Constitution can be made to mean anything thought necessary to getting on

with public and private business. But what then becomes of the law above other laws? It vanishes, of course, except that the Supreme Court takes its place — nine justices, appointed by Presidents, who frequently divide five-to-four and only act on adversary causes.

This decline of trust in constitutionality can, of course, only be remedied by reconstituting the processes of amendment. It is quite relevant, therefore, to consider what amendments would follow if it should be decided to study the whole matter again as was done in 1787, considering the suggestions of many thoughtful individuals, causing public discussion, asking the electorate to decide what is most essential for *present* purposes, not those of the eighteenth century, and finally making for themselves a document of reference, embodying the principles and procedures they most deeply approve.

IV

Some hidden characteristics of the American Constitution appeared after it had become the basic law. Perhaps hidden is the wrong word; but at any rate, they were not at first apparent, and even now there is no general agreement about their meaning. This may be because they were not clearly formulated in the minds of the framers but rather emerged from the practices over the years. It may be that the framers either did not know, or did not approve, the behavior of common people and meant to put the "better citizens" in position to control the nation's institutions. Certainly democracy only gradually approached reality. Jefferson had practically to stage a revolution to make the first approaches; and the movement did not become a massive one until

Jackson, in 1833, moved into Washington with his rabble of frontiersmen.

The defenders of the Constitution, writing in the Federalist Papers, and arguing for ratification, made a careful distinction between republics and democracies. There had been no intention, they said, of consigning power to a mob. This, indeed, was greatly to be feared. It was also to be prevented — would be prevented if the proposed draft should be agreed to. It was accepted; but by no means unanimously. If the Constitution was meant for a republic and the nation gradually became a democracy, a constitution for the one could hardly be expected to serve for the other. It would not necessarily be wholly inappropriate but it would not be wholly relevant either, even if the revolutionary social and economic changes of the nineteenth century had not taken place.

24 Recall that the Bill of Rights was a series of amendments appended to the original draft to assure the support of those who felt that liberties needed more recognition. The framers had felt that the checks and balances they had devised were sufficient protection against a potentially oppressive government; but there were many who did not think so and wanted to make sure. This was the first sign that democracy was a powerful force and likely to spread. The counterpoised branches — executive, legislative, and judicial — each able to prevent the others from becoming arbitrary, made a government unable to act without agreement of all. Add to this the list of actions they were prohibited from doing even if they should agree, and it became a government destined to be slow, constricted in action, and much given to internal controversy. These characteristics were either not anticipated or were not thought to be dangerous. At times when the protection of individual

rights became less important than national interests and general welfare, they caused near paralysis. This, it can be argued, is because the framers believed in leaving much to experience and to the processes of amendment. Brevity left much unsaid that could be filled in when necessary. Necessity would dictate what would be added; and long as the list of may-nots and shall-nots seemed at the time, there was fundamental dependence on kinds of social behavior not mentioned at all. People were expected to behave with reasonable regard for each other. So with the branches of the tripartite government; each was expected to do its duties and not impinge on the prerogatives of the others.

Part of the reason that the intentions of the framers are not always recognized, or at least not seen clearly enough to be agreed on, is that, since they are not stated explicitly and can only be inferred, there has been no serious effort to embody them in statutes. They have to make themselves understood, gain recognition, in spite of activities allowed because, although they serve some interest, their weakening effect on the emerging structure is not realized; but if the Constitution is ambiguous or silent in several important matters the principles or intentions are there. The nation depends on them for its very life.

If this seems obscure, it is because such characteristics materialize slowly out of a welter; there are proliferations, starts and stops, hesitations and setbacks. Still, there does emerge, after all, the concept that a people living together persistently refuse, when they have an opportunity, to allow any such accumulation of power as would permit any interest, much less any individual, to become really authoritarian.

It seems at first a contradiction to speak of *dispersed* power; but that is what federalism attempts.

It is somewhat easier to conceive of *shared* power; but there remains enough difficulty about it so that each sharer can be preoccupied with trying to increase his part and to decrease that of others, not realizing that all must share fairly if those of any are to be secure.

This has happened. Again it is traceable to the contemporary belief in competition. The theory ran that, given equal opportunity, the best man or the best institution would achieve the place his or its talents and efficiency warranted; and so freedom for achievement should not be cut off. The operative word in this formula is "opportunity." Unless it actually exists, competition can never be fair. Saying this implies that any limitation on its fairness weakens the principle. In the agrarian society of the eighteenth century such weakenings were not important. Everyone could have a homestead or a shop, and little capital was needed. It soon became very different as industrialism appeared. The rubric, however, stood unchanged as a public intention even though equality of opportunity had disappeared. The Constitution allowed it. The framers may well have meant it so.

There were differences between the nationalists who dominated the constitutional convention and the minority who objected so strenuously to strong or pervasive government. Washington, Hamilton, and those associated with them were suspected by such political leaders as Henry, from Virginia, of plotting to set up a new monarchy. Patterson from New Jersey, and Yates from New York, as well as several others were certain that the smaller states were threatened. Randolph of Virginia, after taking a prominent part in all the convention's proceedings, finally refused to sign. He, too, thought the central government would be too powerful. Yates had long

since departed to agitate at home against the acceptance of anything done at Philadelphia.

As things stood when the work was done it was necessary for the branches to agree; but the ways of reaching agreement were nominal. Proceeding to whatever must be done was made extremely difficult. It can only be concluded that what was expected to be done was minimal. And it is true that beyond defense there was not much. The rest was prohibition of doing, not duty to do. Commerce among the states could not be interfered with; the states could not tax exports or imports; they could not issue money; they could not abridge the privileges or immunities of citizens; and the states must not question each others' public acts and records.

It was left to custom or common law that ways of reaching agreement on action would be found. That this would prove to be insufficient was not suspected. Lurking behind everything, however, there was the expectation of majority rule. What was wanted by "the people," in the persons of "the people's representatives," would be achieved in this way. It is significant that no other finality has been found. This, of course, means that minorities must give way to majorities if all do not want the same thing; and they seldom do want the same thing.

Experience has shown, of course, that majorities can be wrong. This is not a slight danger; and there is also the probability that the minority may go on protesting that this is so. They may agitate, and may eventually prevail. That is part of the scheme. But there is a rule about this not stated in the Constitution but clearly implied: the minority may not — must not even try — to prevail by force. That would destroy the principle of shared powers by destroying entirely the methodology of their operation. Force

can only lead to the exclusion of some by others and to their suppression if they persist.

There is more to this, again, than at first appears. When minority and minority dissent are referred to, the picture called up is one of vehement protest, violent refusal, marching, riots. What is more serious is subversion for the benefit of special interests whose apologists are so indefatigable. Also, the delicately balanced machinery used for coming to majority agreement is extremely vulnerable to various kinds of interruption, diversion, and persuasion. That machinery provided in the Constitution was not well conceived, and it did not prove capable of becoming more so as population expanded and vast spaces were incorporated in the union. It would be more accurate to say that it was hardly conceived at all. The necessity for political devices
28 was rejected; it was supposed that there would be no parties or organized groups of any kind. In fact politics was unknown to the Constitution as written and all its devices have grown up outside its reach.

Politics is a complicated art understood only by its practitioners and by the most persistent students. It has customs and, of course, rules of its own. Its decisions, however, are reached often by covert manipulation of its machinery; and issues may be presented for democratic decision in such ways that real answers cannot be given. This comes about because party management is so often dominated by a few professionals: there is nothing in the Constitution to prevent the most outrageous procedures.

Because the way toward decision ought to be open throughout, the most effective, the best, end is likely to appear only dimly through veils of interested interference. There are those, inevitably, to whom the end will be objectionable or injurious and they claim

the right to object. This comes to its worst phase when appeal is made to principle. Those who advocate change of government are at a disadvantage because they seem to be critical of a Constitution with no provision for such change but with firm provisions for protecting individual rights. This is easily extended to protecting the rights of those who invade others' rights. Everyone must look out for himself.

The democratic principle that all shall be free to initiate, to try, to persuade, and to do, is hard to make operative. The practical sense calls for allowing all individuals and associations to make their contributions. So the obstructer and the exploiter must be allowed the freedom they demand; they do have rights and these must be respected. When they do not infringe on those of others who are making plans in furtherance of a public interest, they are not easily checked. Something in the future — something desirable but not yet realized and therefore with no really effective advocate — may be jeopardized; but proving that this is so is a difficult procedure.

The chance that in the end a decision looking to eventual good will be made becomes less as more such individuals are encouraged to intervene; and encouragement to do just that is inherent in the procedures. What is struggling to emerge — democratic dialogue — has a very hard time getting itself established in institutions through the methods allowed by its own principles: that all must be heard and that none must be silenced. But it is important that constitutional revision, if there should be a comprehensive one, should not again reject the whole problem of the dialogue and leave it to be settled by illegitimate conflict. This is what the framers did and the results have been costly.

In order to straighten out the procedure, issues can

be defined through planning. That is, they can be laid out as objectives, the alternatives can be stated, their difficulties can be made plain; their costs to affected individuals can be weighed; and all this can be done far enough ahead so that discussion, and, hopefully, a majority agreement can be reached.

A modern democracy requires both an electoral branch to protect and further the public dialogue, and a planning branch to furnish its substance. The Constitution provides neither.

V

It has seemed worthwhile to experiment — as far as
30 the devising of one model after another can be called experiment — with various arrangements calculated to make government more effective for what is wanted of it, and still provide for adherence to essential freedoms.

During almost two centuries, the Constitution has been amended twenty-five times, the first ten amendments constituting the Bill of Rights; but this has not made the Constitution adequate for the late twentieth century. Two amendments had to do with prohibition against alcohol and its later abandonment; one affected voting for the Presidency; another provided for the direct election of senators; three were intended to ensure the rights fought for in the Civil War; one legalized income taxes; one gave women the right to vote; one changed inauguration day from March to January; one permitted voting in the District of Columbia; one limited the President's terms to two.

It will be seen that most of these had to do with civil rights or with minor matters. Only two made any modification of structure. The direct election of senators changed a notoriously reactionary body into a much more responsive one, without, however, honoring the otherwise pervasive principle of equal representation; the smallest state still has two senators just as the largest has.

The limitation of Presidential terms to two was more serious. It was defended as only making what had been customary into a rule; but it was adopted in circumstances that left no doubt of its peevish and partisan intent. Legislatures, both federal and state, meant to make it impossible, whether people wanted it or not, for the executive branch to have the continuity the Roosevelt Administration had had. It was not recognized that, since the President had become the source of legislation, and since his ability to get it rested on his political prestige, taking away the possibility of his running again would make all second terms sterile. It made Presidents into lame ducks.

The most important result of this amendment was to make the legislative branch (both federal and state) more powerful without requiring it to accept the responsibility for the use of its enlarged power. It diminished the President's influence and made it easier for his urgings to be resisted. It made an institution which had become progressively more obstructive as the years passed still more obstructive; moreover it was made easier, within the legislature, for its more reactionary members to keep control over the restless liberals.

The history of amendment under the original constitutional provision shows it to be a device useful for legislative protection but not responsive to de-

mands for reform from the people. A change in the method of initiation and adoption is perhaps the first necessity of constitutional reform — a new method of amendment.

VI

This Twenty-Second Amendment (limiting the President to two terms) is unique in seriously affecting governmental structure. Since its ratification the President might well be ignored from the moment he enters his second term; and a dedicated President would then conclude that he should not continue for another four years. This is serious not only for legislative progress but for another reason as well. Having lost the political power of a potential continuing executive, he has been enfeebled in sustaining the influence he may need to grasp and use the emergency powers. These have been vital to the nation's security in numerous crises and their diminution may well lead to weakness in some future one. This is not to say that the emergency powers do not need definition. They most emphatically do; but the two-term limitation is of no assistance in this.

Since it has come to be more and more obvious that the obstructive branch is the legislative one, its claims to be peculiarly representative are obviously specious. What it most often represents are the special and local interests of its districts and states, but only occasionally the people likely to be exploited by those interests.

This superior position for a districted legislature

emerged from an eighteenth-century additive theory. The assumption was that, if many interests were represented, compromise among them would produce something good for all. What it depended on for results — and still does — is exchanges of votes in more or less frank bargaining. This will always be favorable to members with the most seniority and so holding the most privileges to bargain with; and the ones begging for consideration from their more powerful brethren cannot be assumed to be begging for something useful to people as a whole. They want to be able to say during their next campaign that they have extracted from the national bounty favors for the folks — or for their supporters — at home, and home is a locality; it is not the nation.

Realistically, a custom of this kind is weighted against those citizens who have the least to give their representatives in return for his gifts. For many years in our history, many Americans did not even have votes to give. For the first half-century there were property qualifications which excluded at least eighty per cent of white male adults, the only class able to vote at all. Until the Civil War there were racial exclusions, and these were perpetuated by literacy tests and poll taxes even after the Thirteenth and Fourteenth Amendments in 1868 and 1870 respectively. In 1920 that part of the population who were women could not vote. And until recently the votes of some persons counted more than others because of malapportionment: districts were not drawn as population densities changed. Democracy — one man, one vote — was not something intended by the framers and protected by the Constitution; it took the better part of two centuries for its embodiment in electoral institutions. It also took sudden discovery by a Supreme Court majority of a meaning the Con-

stitution and its amendments did not really intend.

During all this time the legislative branch favored that restricted number of citizens who could vote and whose votes counted most. It was not strange that within legislatures themselves this weighting was reflected in rules and customs that made it easier for those who represented the least democratic districts to have and keep the most power. The House of Representatives deserved the name much less than its members liked to have outsiders think; and this was even more true of lower houses in state legislatures. Since amendment to the Constitution had to make its way through these obstructions it is no wonder that no amendments ever touched the legislatures themselves.

There have been rigorous examinations of the executive branch during the past half-century, resulting in many changes. There have been only feeble scrutinies of the legislative branch and they have led to no changes, or, it is more true to say, only those changes the legislators could use to fortify their privileges. They have immensely increased their salaries, their perquisites, and their staffs; but these have made their privileges easier to sustain and so have gone in entirely the wrong direction if increased democracy is the criterion.

Something much more drastic is needed than can be accomplished by reorganizations within the constitutional allocations, even if all that could be done with them were done. The government needs to be oriented to wholeness for the nation and fairness for its citizens. The legislature, as well as the President, needs to be made responsible to national needs rather than to local ones.

If there were no other reason, there is the need to cope with technologies now at least continental in

scope. From district-oriented legislators, trading for favors among themselves and hospitable to swarms of lobbyists for special interests who offer practical support in exchange for favorable treatment, legislation for the furthering of general interests is most unlikely to emerge. Presidents may push for such movement. They may remind their partisans of promises made as well as of developing needs; but their leverage is weak at any time and it disappears during their second terms. President Johnson, appalled by his loss of prestige and influence, and seeing what lay ahead, simply quit. He had to; he could get nothing more done except as Commander-in-Chief; and he encountered widespread objection to the military operations he conducted in dictator fashion. If he had run again and had been reëlected he would have had no influence with the Congress, and even as Commander-in-Chief his powers would have been threatened and almost certainly restricted.

If there have been Presidential promises in a second campaign they will have been for action on general issues and only a rare one of these will move congressmen. Tax reform will be shaped to favor their supporters; a national road system will be measured by its local uses; farmers who need them least will get subsidies; consumers will be protected reluctantly and in ways not too embarrassing to business; banking laws will protect banks but only nominally their customers; foreign aid will be of no interest whatever unless it is used — as much of it has been — to sell American goods abroad, including, unfortunately, military equipment.

Franklin D. Roosevelt had an unprecedented second-term victory in 1936; but the Congress was not impressed; and the conflicts between them were only made more vicious by the outpouring of popular

support. Even without the limitations on succession he got nothing from the Congress except appropriations in preparation for war, and even to these there was strong opposition.

To reform the legislature has always been the most obvious way to a better government; but it has been the one reform that nothing has been done about. Meanwhile there is constant effort to reduce the President's powers.

Would the President's weakness in pushing for accommodation to change be much affected if, instead of two terms, he should be limited to one? That obviously should not be done if it stood alone. If he had only one term he would never have the leverage he needs. Even if his one term should be six years instead of four, the weakness of a man with no political future would remain. No attention would be paid to his proposals after his first few months in office. When the jobs had all been parceled out and the lobbyists knew whom they had to deal with, everything of national or general interest would be ignored by the legislators.

What, then, is the cure? Not a reform of the Presidency; clearly a reform of the legislature. It must be made to have national as well as local responsibilities. It must be responsive to Presidential leadership by having the same constituency as his.

This requires that the malapportioned Senate shall be replaced by an Upper House chosen in a different way. It requires that the House of Representatives become representative of *all* the people. Some of its members — a quarter or a third, perhaps — ought to be elected at large rather than from districts, and the at-large members ought to have more internal power in the House as leaders and chairmen of committees.

VII

The Presidency cannot continue to be what is expected of it as things are; and this is for more reasons than that the Twenty-Second Amendment did serious damage. The office has had more burdens piled on it than it can carry. All the reorganizations of recent years have not made matters much better. This is because the President has been conceived literally as a chief executive, whereas he has not really been that since Cleveland's time. He is indispensable as the maker of foreign and domestic policy, as legislative leader, and as surrogate of the people. It is not necessary that he should manage the service departments; and for a long time he has not been able even to keep in communication with their heads. Since, however, the fiction that he is the chief administrator persists, he is held responsible for the performance of hundreds of agencies whose performances he cannot possibly follow. This leads him to give them very infrequent and necessarily superficial attention: and their appointed officials as well as the bureaucracies take his attentions lightly because he cannot follow up his directives. Besides, these officials know the directives were not adequately studied to begin with. This allows administrators to escape general policy decisions and do pretty much as they please. It is a constant irritation to the President, whose more pressing duties lie elsewhere, that his executive establishment has escaped his control.

He cannot escape responsibilities for his relations with other nations. This requires much more than half his energy and time. Most of the other half has

to be given to legislative leadership. The nation's position in the world cannot be placed second, even to law-making. But the legislature would come to an almost complete stop if he did not initiate measures and prod them into law. Since the success of any administration is measured by the progress it makes in accommodation to changing circumstances and in solving problems, law-making must have high priority among his duties. But the Congress has made itself increasingly resistant to Presidential pressure and has represented this as a virtue under the separation theory. It has also become more receptive to the blandishments of the special interests who have something to gain from shaping statutes to their own preferences. To make some sort of record in getting necessary legislation, the Presidency has latterly accumulated a large and growing staff of administration lobbyists to counter those of the interests. Capitol Hill is a guerrilla battleground with legislators playing the inglorious role of selling votes to one side or the other — to the President or to those who oppose him.

This is hardly a constructive or even tolerable way to conduct the affairs of a continental power.

Besides reorganizing the Congress to relieve the impasse between the branches, the national interest requires that the President be relieved of the direct managerial duties he no longer attends to; they can become the responsibility of elected Vice Presidents. He must continue to be the active Commander-in-Chief; nothing is more vital to a democracy than civilian control of the armed forces. He must keep general oversight of financial affairs, seeing to it that stability is maintained, that expenditures are within the nation's productive capacity, and that generally the allocations carry out national missions and pro-

vide essential services. But he must be allowed the time and energy required for these massive responsibilities.

This arrangement would allow him to do what no one but he can or should even be allowed to do. And it would separate from his immediate responsibility the managerial, regulatory, and custodial duties he cannot and should not be expected to perform.

The judicial system in the rewritten constitutional model suggested here would have much the same place as was intended for it by the framers; but not that captured for it by Chief Justice Marshall in his famous coup. Marshall repudiated the Court's constitutional confines very early and since then the Court has made its way slowly to a position of supremacy. It has taken to impairing the separation principle by using its granted authority of interpretation to tell the other branches what they can and cannot do; and the checks have not been invoked to prevent it.

It is quite clear that branches cannot be separate and interdependent if one of them can dictate what the others' powers are. So the Court has joined the other branches in abandoning restraint, observing its rule only to the limit it feels compelled to observe for political reasons because the Congress might possibly become offended enough to limit its jurisdiction. This is an unlikely event in a body two-thirds of whose members are lawyers, but it has been threatened and it might happen.

The success of the Constitution depended on restraint. The President was expected not to go beyond the necessities of his office; the Congress was expected not to interfere with the President's business; and the Supreme Court was expected to apply the Constitution to cases coming before it without either

legislating or interfering with execution. Since none of the branches has really respected this principle and each has reached far beyond its reasonable area of power, the question why this occurred is relevant. The answer is that too spacious a no-man's-land was left where such aggression could take place. There was not nearly enough specification of duties and powers. Also it was not anticipated that vast social and economic changes would make extensions necessary. A decent respect of each branch for the others was essential. The disappearance of that respect has been disastrous.

The framers did depend too much on the restraint that did not materialize; but it must be said that a document not having a large element of this sort is almost inconceivable. The famous deliberate checks of each on the powers of the others did modify this
40 dependence. No branch can operate without some concession to the others, however much it may try to escape or to overrun its authority. But as duties multiplied, and powers were contended for, the needed checks ought from time to time to have been reconsidered. They never were, and governmental dissensions have sometimes been so acrimonious and so stubbornly held to that operations have come to a stop or, at best, have been seriously obstructed.

Any new redrafting would need to readjust these relationships, always recalling that no democracy can expect to cast away its fundamental reliance on restraint. If it did it would become totalitarian. Each citizen is expected to command himself and only to be commanded when rules for his behavior are too much loosened. So with government. But there must be some definition of limits, and those in the document of 1787 do not suffice for the conditions of the present.

VIII

With these considerations in mind it can be seen what a revised constitution ought to accomplish:

It ought to make amendment more frequent — not easier, but more a matter of continuous consideration.

It ought to add political planning and regulatory branches. These already exist in extralegal, not in constitutional, forms. They are not likely to disappear because they have become essential, but they need the guidance and protection of basic law.

It ought to redefine the duties of the three older branches making their responsibilities more explicit and reshaping them to the necessities of the present.

It ought to list the rights of individuals in their present-day relationships, and state what they owe to each other and to the body politic.

It ought to provide a method for the wide discussion of issues and for the election of candidates for office.

This is the intent of the draft long under discussion at the Center and many times modified. It is now hoped that it may have wider discussion and may undergo further modification as it is studied by those for whom a constitution ought to be their *lex supra leges.*

A MODEL CONSTITUTION FOR A UNITED REPUBLICS OF AMERICA

A model for discussion
VERSION XXXVII (1970)

ADOPTION

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It has been assumed in the course of this constitutional exercise that the time might come when the American people, exasperated by the obstructionism of their Congress, the unwarranted assumption of legislative powers by their Supreme Court, or the unbearable load of duties undertaken by the President, might decide that new institutions are necessary to fulfill their reasonable expectations of progress.

Conceivably, it could happen in this way:

A President, approaching the end of his term, provoked by his inability to move the Congress, determined to check the government's hardening into bureaucratic stolidity, fearful of the accumulating consequences of obsolescence, and conscious of his inability to carry all his responsibilities, concludes that he must appeal for consent to a new constitution.

He cannot proceed in the ways provided in the existing Constitution. The Congress could not be ex-

pected to agree, by a two-thirds majority of both houses, to such a proposal; and serious petition for a convention from the states is even more unlikely. Both the present Congress and the existing states will be adversely affected by what must be done.

The President recalls that the framers in 1787 carried through something of a tour de force. The calling of a convention had been regularly authorized, it was true; but delegates, who had been directed simply to amend the Articles of Confederation, had gone much beyond their terms of reference and had framed a whole new governmental scheme. Moreover they had provided for its ratification by the adherence of only nine out of thirteen states, a doubtful way of reducing expected opposition.

It seems to the President that some new effort of this kind must be made. If it must be made in unorthodox fashion, it still could have the consent of the ultimate authority in a democracy — the people. If they demand a new constitution, who could say that the demand ought to be denied? He decides to give them that opportunity and he announces what he intends.

There is the expected uproar from those who fear the loss of privileges. But there is louder commendation from those who agree with him, and he is able to persuade a hundred concerned citizens of acknowledged prominence to join in the reconsideration. They undertake to draft a new constitution. By the time he has to campaign for reëlection something like the following document has been produced and agreed to by eighty of the hundred. The President makes it the single issue of his appeal. He is satisfied, he says, that the draft constitution incorporates the principles of freedom under law; that it would assist in adaptation to the circumstances imposed by nature

and by the need for tolerance among nations; and that it would encourage initiative and productivity while offering economic security.

The President assumes, he says, that since he is wholly identified with it, his election by a considerable majority would signal approval of the new constitution. They are engaged, he tells the voters, in a referendum of sovereign persons who stand above all the institutions of the government created by their ancestors and too little changed since that time. He puts the ratifying majority at sixty per cent of those voting.

He speaks of the moment as a solemn one in the nation's experience, a time when the past is being conditioned to the future, and when a law fundamental to all other laws is again being created as it had been by the founders in another time of national
 trial.

He pledges that if his proposal is approved, he will proceed by interim arrangement until the new constitution can be implemented; then he will retire to become a member of the new Senate provided for in the constitution.

Thus the issue is joined . . .

PREAMBLE

So that we may join in common endeavors, welcome the future in good order, and create an adequate and self-repairing government — we the people do establish the United Republics of America, herein provided to be ours, and do ordain this Constitution, whose law it shall be until the time provided for it shall have run.

ARTICLE I

The Republics

SECTION 1. There shall be Republics, each numbering no less than five per cent of the whole people, with such exceptions as the boundary commission shall make. They shall continue during the life of this Constitution, together forming the United Republics of America.

SECTION 2. They shall have constitutions formulated and adopted by processes hereinafter prescribed.

SECTION 3. They shall have Governors General; legislatures; and planning, administrative, and judicial systems.

SECTION 4. Their political procedures shall be organized and supervised by their own electoral Overseers; but their elections shall not be in years of Presidential election.

SECTION 5. They may make use of the United Republics' electoral apparatus and may be allotted funds under rules agreed to by the national Overseer; but, unless exceptions are approved by him, expenditures may not be made by or for any candidate; and residence requirements shall be no longer than thirty days.

SECTION 6. They may charter subsidiary governments, urban or rural, and may delegate to them powers appropriate to their responsibilities; and such governments shall be autonomous in matters ex-

clusive to their citizens, except that they shall conform to constitutions of the United Republics of America and of their Republics.

SECTION 7. Republics may lay, or may delegate the laying of, taxes; but these shall conform to the rules and restraints stated herein for the United Republics; and those on land may be higher than those on its improvements.

SECTION 8. They shall be responsible for the administration of public services not reserved to the government of the United Republics, such activities being concerted with those of corresponding national agencies, where these exist, under arrangements common to all.

SECTION 9. The rights and duties prescribed in this Constitution shall be effective in the Republics and shall be suspended only in states of emergency declared by Governors General and not disapproved by the Senate of the United Republics.

SECTION 10. Police powers of the Republics shall extend to all matters not reserved to the United Republics; but preëmpted powers shall not be impaired.

SECTION 11. Republics may not enter into any treaty, alliance, or confederation not approved by the United Republics.

They may not coin money, provide for the payment of debts in any but legal tender, nor make any charge for inter-Republic services. They may not pass ex post facto laws or laws impairing the obligation of contract.

SECTION 12. Republics may not tax exports, may not tax with intent to prevent imports, and may not impose any tax forbidden by United Republics law; but the objects appropriate for taxation by Republics shall be clearly designated.

SECTION 13. Republics may not impose quarantine against imports from other Republics or impose any hindrance to citizens' freedom of movement.

SECTION 14. If governments of the Republics fail to carry out fully their constitutional duties, their officials shall be warned and may be required by the Senate, on the recommendation of the Watchkeeper, to conform or be subject to suspension from their duties.

ARTICLE II

The Electoral Branch

SECTION 1. To arrange for participation by the electorate in the determination of policies and the selection of officials, there shall be an Electoral Branch of the United Republics.

SECTION 2. An Overseer of electoral procedures shall be chosen by the Senate for one term of seven years. He shall see to the organizations of national and district parties, arrange for discussion among them, and provide for the nomination and election of

candidates for public office. During his service he shall belong to no political organization.

SECTION 3. A national party shall be one having had at least a five-per-cent affiliation in the latest general election; but a new party shall be recognized when valid petitions have been signed by at least two per cent of the voters in each of thirty per cent of the districts drawn for the House of Representatives. Recognition shall be suspended upon failure to gain five per cent of the votes at a second election, ten per cent at a third, or fifteen per cent at further elections.

District parties shall be recognized when at least two per cent of the voters shall have signed petitions of affiliation; but recognition shall be withdrawn upon failure to attract the same percentages as are necessary for the continuance of national parties.

SECTION 4. Recognition by the Overseer shall bring parties within established regulations and entitle them to common privileges.

SECTION 5. The Overseer shall promulgate rules for party conduct and shall see that fair practices are maintained. For this purpose he shall appoint deputies in each district and shall supervise the choice, in district and national conventions, of party administrators. His regulations and appointments may be objected to by the Senate; and he may be removed by a majority vote.

SECTION 6. The Overseer, with the administrators and other officials, shall:

a. Provide the means for discussion, in each

party, of public issues, and, for this purpose, see that members have adequate facilities for participation.

b. Arrange for discussion, in annual district meetings, of the President's views, of the findings of the Planning Branch, and such other information as may be pertinent for enlightened political discussion.

c. Arrange, on the first Saturday in each month, for enrollment, valid for one year, of voters at convenient places.

SECTION 7. He shall also:

a. Assist the parties in *nominating* candidates for district members of the House of Representatives each three years; and for this purpose designate one hundred districts, each with a similar number of eligible voters, redrawing districts after each election. In these there shall be party conventions having no more than three hundred delegates, so distributed that representation be approximately equal.

Candidates for delegate may become eligible by presenting petitions signed by two hundred registered voters. They shall be elected by party members on the first Tuesday in March, those having the largest number of votes being chosen until the three hundred, together with ten alternates, be complete.

District conventions shall be held on the first Tuesday in April. Delegates shall choose three candidates for membership in the House of Representatives, the three having the most votes becoming candidates.

b. Arrange for the *election* each three years of three members of the House of Representatives in each district from among the candidates chosen in party conventions, the three having the most votes to be elected.

SECTION 8. He shall also:

a. Arrange for national conventions to meet nine years after the previous Presidential election, having an equal number of delegates from each district, the whole not to exceed one thousand.

Candidates for delegate shall be eligible when petitions signed by five hundred registered voters have been filed. Those with the most votes, together with two alternates, shall be chosen in each district.

b. Approve procedures in these conventions for choosing one hundred candidates to be members-at-large of the House of Representatives, for this purpose causing delegates to file one choice with convention officials, voting on submissions to proceed until one hundred achieve ten per cent; but not more than three choices may be resident in any one district; if any district have more than three, those with the fewest votes shall be eliminated, others being added from the districts having less than three, until equality be reached. Of those added, those having the most votes shall be chosen first.

c. Arrange procedures for consideration and approval of party objectives by the convention.

d. Formulate rules for the *nomination* in these conventions of candidates for President and Vice Presidents when the offices are to fall vacant, candidates for nomination to be recognized when petitions shall have been presented by one hundred or more delegates, pledged to continue support until candidates can no longer win or until they consent to withdraw. Presidents and Vice Presidents, after serving for three years, shall submit to referendum, and if rejected, new conventions shall be held within one month and candidates shall be chosen as for vacant offices.

Candidates for President and Vice Presidents shall be nominated on attaining a majority.

e. Arrange for the *election* on the first Tuesday in June, in appropriate years, of new candidates for President and Vice Presidents, and for members-at-large of the House of Representatives, all being presented to the nation's voters as a ticket; if no ticket achieve a majority, he shall arrange another election on the third Tuesday in June between the two having the most votes; and if referendum so determine he shall provide similar arrangements for the nomination and election of candidates.

If there be no majority in this election, another shall be held on the first Tuesday in July following.

SECTION 9. He shall also:

a. Arrange for the convening of the legislative houses on the fourth Tuesday of July.

b. Arrange for inauguration of the President and Vice Presidents on the second Tuesday of August.

SECTION 10. All costs of these procedures shall be paid from public funds and there shall be no private contributions to parties or candidates; no contributions or expenditures for meetings, conventions, or campaigns shall be made; and no candidate for office may make any personal expenditures unless authorized by the Overseer; and persons or groups making expenditures, directly or indirectly, in support of prospective candidates, shall report to the Overseer and shall conform to his regulations.

SECTION 11. Expenses of the Electoral Branch shall be met by the addition of one per cent to their net annual taxable income returns by taxpayers, this sum

to be held by the Chancellor of Financial Affairs for disposition by the Overseer.

Funds shall be distributed to parties in proportion to the respective number of votes cast for the President and Governors General at the last election, except that new parties, on being recognized, shall share in proportion to their number. Party administrators shall make allocations to legislative candidates in amounts proportional to the party vote at the last election.

Expenditures shall be audited by the Watchkeeper; and sums not expended within two years shall no longer be available.

It shall be a condition of every communications franchise that facilities shall be available for allocation by the Electoral Overseer to candidates for office.

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SECTION 12. In all electoral decisions the vote of any citizen shall count equally with others; his eligibility to vote and his qualifications for office shall be determined as provided herein.

ARTICLE III

The Planning Branch

SECTION 1. There shall be a Planning Branch to formulate and administer plans and to prepare budgets for the uses of expected income in pursuit of policies formulated by the processes provided herein.

SECTION 2. There shall be a Planning Board of

eleven members appointed by the President; the first members shall have terms of one to eleven years, the one having the longest term to be chairman; thereafter one shall be appointed each year. They shall be eligible for reappointment.

SECTION 3. The chairman shall present to the Board six- and twelve-year development plans prepared by a planning department under his supervision, and they shall be revised after public hearings in the year before they are to take effect. These shall be submitted to the President on the fourth Tuesday in July for transmission to the Senate on September 1st with his comments.

The chairman shall transmit the annual budget to the President on the fourth Tuesday in July. It shall be a revision, for the coming year, of the six-year plan, combining estimates for all departments and agencies.

If a majority of the Board fail to approve the budget proposals by the forwarding date, the chairman shall nevertheless make submission to the President with notations of reservations by members. The President shall transmit the budget, with his comments, to the House of Representatives on September 1st.

SECTION 4. A planning administrator shall be appointed by the chairman, unless a majority of the Board object, from panels elected by national associations of professional planners recognized by him; and he shall appoint such deputies as may be agreed to by the chairman and the Board.

SECTION 5. It shall be recognized that the six- and twelve-year development plans represent national in-

tentions tempered by the appraisal of possibilities. The twelve-year plan shall be a general estimate of probable progress, both governmental and private; the six-year plan shall be more specific as to estimated income and expenditure.

The purpose shall be to advance, through every agency of government, the excellence of national life; it shall be the further purpose to anticipate innovations, to estimate their impact, to assimilate them into existing institutions, or to moderate deleterious effects on the environment and on society.

The six- and twelve-year plans shall be disseminated for discussion and the opinions expressed shall be considered in the formulation of plans for the succeeding year.

SECTION 6. For both plans an extension of one year
54 into the future shall be made each year and the estimates for all other years shall be revised accordingly. For non-governmental activities the estimate of developments shall be calculated to indicate the need for enlargement or restriction.

SECTION 7. If there be objection by the President or the Senate to the six- or twelve-year plans, they shall be returned for restudy and resubmission. If there still be differences, and if the President and the Senate agree, they shall prevail. If they do not agree, the Senate shall prevail and the plan shall be revised accordingly.

SECTION 8. The Republics, on June 1st, shall submit proposals for development to be considered for inclusion in those for the United Republics. Researches and administration shall be delegated, when convenient, to planning agencies of the Republics.

SECTION 9. Submissions may be required from such private individuals or associations as are affected with a public interest, including those organized as Authorities. They shall report intentions to expand or contract, estimates of production and demand, probable uses of resources, numbers to be employed, and such other information as may be essential to comprehensive public planning; but there shall be regard for the convenience of those required to make reports.

SECTION 10. The Planning Branch shall make and have custody of the official maps of the United Republics and these shall be documents of reference for future developments both public and private. The location of facilities, with extension indicated, and the intended use of all areas, shall be marked out on the official maps.

Official maps shall also be maintained by the planning agencies of the Republics; and in matters not exclusively national the Board may rely on these.

Developments in violation of official designation shall be at the risk of the venturer and there shall be no recourse; but losses from designations preceding acquisition shall be recoverable in actions before the Court of Claims.

SECTION 11. The Planning Branch shall have available to it funds equal to one-half of one per cent of the approved United Republics budget (not including debt service or payments from trust funds). They shall be held by the Chancellor of Financial Affairs and expended according to rules approved by the Board.

SECTION 12. Allocations may be made for the work

of the planning agencies of the Republics; but their procedures shall conform to standards formulated by the Board, taking into account population, area, and such other criteria as may be relevant; but only the United Republics map and plans or those approved by the Board shall have status at law.

SECTION 13. In making plans, there shall be due regard to the interests of other nations and such cooperation with their intentions as may be consistent with plans for the United Republics.

SECTION 14. The Planning Branch may coöperate with international agencies, making such contributions to their work as are approved by the President.

ARTICLE IV

The Presidency

SECTION 1. The President of the United Republics shall be responsible to all the people. He shall be the head of their government, shaper of its commitments, expositor of its policies, and supreme commander of its protective forces.

He shall have one term of nine years, unless rejected by sixty per cent of the electorate after three years.

He shall take care that the nation's resources are estimated and are apportioned to its more exigent needs; and he shall recommend such plans, legislation, and action as he may find necessary.

He shall address the legislators each year on the state of the nation, calling upon them to do their part for the general good, and from time to time shall make report to the citizens.

With the Vice Presidents and the Intendant, he shall see to it that the laws are faithfully executed and shall pay attention to recommendations of the Planning Board, the Watchkeeper, and the Regulator in formulating his strategies.

SECTION 2. There shall be two Vice Presidents elected with the President; at the time of taking office the President shall designate one to supervise general affairs and the other to supervise internal affairs. He shall also designate one to be his successor if he shall be permanently incapacitated; the other shall be second in succession. If either Vice President shall die or be incapacitated, the President, with the consent of the Senate, shall appoint a successor. They shall serve with him if he shall have an extended term; but their assignments shall be at his convenience.

If the Presidency shall fall vacant through the disability of both Vice Presidents, the Senate shall elect a successor from among its members to serve until the next general election.

SECTION 3. Responsible to the Vice President for General Affairs there shall be Chancellors of Foreign, Financial, Military, and Legal Affairs.

The Chancellor of Foreign Affairs shall assist the President in conducting relations with other nations.

The Chancellor of Financial Affairs shall supervise the nation's monetary system and regulate its capital markets and credit-issuing institutions as they may be established by law; and this shall include

lending institutions for operations in other nations or in coöperation with them, except that treaties may determine their purposes and standards.

The Chancellor of Legal Affairs shall advise governmental agencies and represent them before the courts.

The Chancellor of Military Affairs shall act for the Presidency in disposing all armed forces except Republican Guards commanded by Governors General; but these shall be available for national service at the President's convenience.

Except in declared emergency, the deployment of forces in far waters, or in other nations without their consent, shall be notified in advance to a national security committee of the Senate and if it object, and the Senate shall agree, it shall prevail.

58 SECTION 4. Responsible to the Vice President for Internal Affairs there shall be chancellors of such departments as the President may find necessary for performing the services of government and are not rejected by law when the succeeding budget is considered.

SECTION 5. Candidates for the Presidency and the Vice Presidencies shall be natural born citizens. Their suitability may be questioned by the Senate within ten days of their nomination, and if two-thirds of the whole agree, they shall withdraw and a nominating convention shall be reconvened. At the time of his nomination no candidate shall be a member of the Senate and none shall be on active service in the armed forces.

SECTION 6. The President may take leave because of illness or for an interval of relief, and the Vice Presi-

dent in charge of General Affairs shall act in his place; but the Senate shall be notified and a majority may object or may recall him to active duty. He may resign if the Senate agree; and if his term shall have more than two years to run, the Overseer shall arrange for a special election for President and Vice Presidents.

SECTION 7. The Vice Presidents may be directed to perform such ministerial duties as the President may find convenient; but their instructions shall be of record, and their actions shall be taken as his deputy.

SECTION 8. Incapacitation of the President may be established without his concurrence by a two-thirds vote of the Senate, whereupon his successor shall become acting President until the disability be declared, by a similar vote, to be ended or to have become permanent. Similarly the other Vice President shall succeed if his predecessor die or be disabled. Special elections, in these contingencies, may be required by the Senate.

Acting Presidents may appoint deputies, unless the Senate object, to assume their supervisory duties until the next election.

SECTION 9. The Vice Presidents, together with such other officials as the President may designate from time to time, may constitute his cabinet or council and shall serve as he may require, but this shall not include officials of other branches.

SECTION 10. Treaties or agreements with other nations, negotiated under the President's direction, shall be in effect unless objected to by a majority of the Senate within ninety days. If objected to, the Presi-

dent may resubmit and the Senate reconsider. If a majority still object the Senate shall prevail.

SECTION 11. The President may cause information to be withheld from disclosure if it be judged by him to be harmful to any individual or to the public interest; but it shall be his duty not to infringe the public's right to know for what reason decisions are made.

SECTION 12. All officers of the United Republics including representatives abroad, except as provided herein, shall be appointed and may be removed by the President. The Senate may object to appointments within sixty days, and alternative candidates may be offered until it agree.

60 SECTION 13. The President shall transmit to the Planning Board and the House of Representatives, on the fourth Tuesday in June, his estimate of the maximum allowable expenditures for the ensuing fiscal year, and this shall be adhered to except in declared emergency.

SECTION 14. There shall be an Intendant responsible to the President. He shall supervise Offices for Intelligence and Investigation. He shall also supervise an Office of Emergency Organization with the duty of providing plans and procedures for such contingencies as may be anticipated.

SECTION 15. It shall also be the duty of the Intendant to coördinate scientific and cultural studies within the government and elsewhere, and for this purpose he shall establish such agencies and organize such assistance as may be found necessary.

SECTION 16. Offices for other purposes may be established and may be discontinued by Presidential order.

ARTICLE V

The Legislative Branch:

(The Senate, and the House of Representatives)

A. *The Senate*

SECTION 1. There shall be a Senate with membership as follows: If they so desire, former Presidents, Vice Presidents, Principal Justices, Overseers, Chairmen of the Planning Board, Governors General of the Republics having had more than seven years' service, and unsuccessful candidates for the Presidency and Vice Presidency who have received at least thirty per cent of the vote; to be appointed by the President: three persons who have been Chancellors, two officials from the civil, and two from the diplomatic services; three senior military officers; also one person from a panel of three, elected in a process approved by the Overseer, by each of twelve such groups or associations as the President may recognize from time to time to be nationally representative, but none shall be a political group, no individual selected shall have been paid by any private interest to influence government, and any association objected to by the Senate shall not be recognized. Similarly, to be appointed by the Principal Justice, five persons distinguished in public law including three former mem-

bers of the High Courts or the Judicial Council. Also, to be elected by the House of Representatives, three members who have served six or more years.

Vacancies shall be filled as they occur.

SECTION 2. Membership shall continue for life, except that absences not provided for by the Senate shall constitute retirement. Retirees may not engage in another paid occupation except in accord with an approved rule.

SECTION 3. The Senate shall elect a Provost to be its presiding officer for two years; but he shall continue unless a majority shall then disapprove. He shall appoint other officers, unless the House object, including a Vice Provost to act in his absence.

SECTION 4. The Senate shall convene each year on the second Tuesday in July and shall be in continuous session, but may adjourn to the call of the Provost, who may also excuse the absence of members. A quorum shall be more than three-fifths of the whole membership.

SECTION 5. The Senate shall consider, and return within thirty days, all measures approved by the House of Representatives except the annual budget; approval or disapproval shall be by a majority vote of those present; objection shall stand unless the House of Representatives shall overcome it by a two-thirds vote; if no return be made, approval by the House of Representatives shall be final.

SECTION 6. The Senate may ask advice from the Principal Justice concerning the constitutionality of measures before it; and if this be done, the time for

return to the House of Representatives may extend to sixty days.

SECTION 7. If requested, the Senate may advise the President on matters of public interest; or, if not requested, by resolution approved by two-thirds of those present. There shall be a special duty to note the resolutions of party conventions and commitments made during campaigns; and, if these be ignored, to remind the President and the House of Representatives of these undertakings.

SECTION 8. In time of clear and present danger caused by cataclysm, by attack, or by insurrection, the Senate may declare a national emergency and may instruct the President to act. If the Senate be dispersed, and no quorum available, the President may proclaim the emergency, and may terminate it unless the Senate shall have acted. If the President be not available, and the circumstances be extreme, the senior serving member of the Presidential succession may act until a quorum assemble.

SECTION 9. The Senate may also define and declare a limited emergency in time of prospective danger, or of local or regional disaster; or if an extraordinary advantage be anticipated; it shall be considered by the House of Representatives within three days, and unless disapproved may extend for a designated period before renewal.

During declared emergency all defined procedures shall be adhered to unless it transcend all definition.

SECTION 10. The Senate shall elect a National Watchkeeper and shall supervise, through a standing

committee, a Watchkeeping service conducted according to rules formulated by him for their approval.

With the assistance of an appropriate staff he shall gather and organize information concerning the adequacy, competence, and integrity of governmental agencies and their personnel, as well as their continued usefulness; he shall also suggest the need for new or expanded services; and he shall also report, concerning any agency, the deleterious effect of its activities on citizens or on the environment.

For these purposes, investigations may be made, witnesses examined, post-audits made, and information required.

The Provost shall present the Watchkeeper's findings to the Senate, and, if it be judged to be in the public interest, they shall be made public, or, without being made public, be sent to the appropriate
64 agency for its guidance and further action. On recommendation of the Watchkeeper the Senate may initiate measures to be voted on by the House of Representatives within thirty days. When approved by a majority and not vetoed by the President, they shall become law. For the Watchkeeping service one-quarter of one per cent of individual net taxable incomes shall be held by the Chancellor of Financial Affairs; but amounts not expended in any fiscal year shall be available for general use.

B. *The House of Representatives*

SECTION 1. The House of Representatives shall be constituted of members who have been freely elected by the citizens of the United Republics and shall be the original law-making body.

SECTION 2. The House shall convene each year on the second Tuesday in July and shall remain in continuous session except that it may adjourn to the call of a Speaker, elected by majority vote, who shall be its presiding officer.

SECTION 3. It shall be a first duty of the House to implement by legislation the provisions of this constitution.

SECTION 4. Party leaders and their deputies shall be chosen by caucus at the beginning of each session.

SECTION 5. Standing and temporary committees shall be selected as follows:

Committees dealing with the calendaring and management of bills shall have a majority of members nominated to party caucuses by the Speaker; others shall be nominated by minority leaders. Membership shall correspond to the parties' proportions at the last election. If nominations be not approved by a majority of the caucus, the Speaker or the minority leaders shall nominate others and these shall be seated.

When committees are constituted, the Speaker shall nominate chairmen from among their members; but chairmen shall be at-large members.

Members of other committees shall be chosen by party caucus in proportion to the results of the last election. Chairmen shall be chosen annually by the Speaker from among at-large members.

Bills referred to committee shall be returned to the House with recommendations within thirty days unless the House shall permit extension by majority vote.

All committee action shall be by majority vote and

those voting for and against shall be recorded.

No committee chairman shall serve longer than six years.

SECTION 6. Approved legislation not objected to by the Senate within thirty days after submission shall be presented to the President for his approval or disapproval. If the President disapprove, and three-quarters of the membership still approve, it shall become law. The names of those voting for and against shall be recorded. Bills not returned within eleven days shall become law.

SECTION 7. The President may have thirty days to consider measures approved by the House and not presented to him twelve days previous to adjournment.

SECTION 8. The House shall consider the annual budget; if there be objection, it shall be notified to the Planning Board; but objection must be by whole title. The Board shall resubmit; but if there still be objection, the House shall prevail if there be a two-thirds majority.

Titles not objected to shall be in effect and shall constitute appropriation.

The budget for the fiscal year shall be in effect on January 1st. Titles not yet acted on shall be as in the former budget until action be completed.

SECTION 9. It shall be the duty of the House to make laws:

(1) For the laying and collecting of taxes:

a) Collections to be uniform throughout the United Republics.

b) Except such as may be authorized by law to be laid by the Republics or other authorities, all collections to be made by the revenue department of the United Republics. This shall include collections for the trust funds hereinafter authorized.
c) Except for corporate levies to be held in the National Sharing Fund, hereinafter authorized, revenues may be collected only from individuals and only from incomes; but there may be withholding from current incomes.
d) Limits may be established for altering rates of taxation to assist in the maintenance of stable economic activity. Within those limits the President may act by executive order.
e) Taxes shall not be retroactive.
f) Enterprises owned or conducted by religious establishments or other non-profit organizations shall be taxed.
g) There shall be no taxes on food, medicines, residential rentals, or on commodities or services designated by law as necessities; and there shall be no double taxation.

(2) For expenditure from revenues:

a) For the purposes detailed in the annual budget unless objection be made by the procedure prescribed herein.
b) For such other purposes as it may indicate and may require the Planning Branch to include in revisions of the budget; but, except in declared emergency, the total may not exceed the President's estimate of available funds.

(3) For fixing the percentage of net corporate taxable incomes to be paid into a National Sharing

Fund to be held in the custody of the Chancellor of Financial Affairs and to be expended for such welfare and environmental purposes as are determined by law; but expenditures for these purposes shall not exceed the amount held in the Fund.

(4) To provide for the regulation of commerce with other nations and among the Republics, Possessions, Territories, or, as shall be mutually agreed, Affiliated Republics; but exports shall not be taxed; and imports shall not be taxed except on recommendation of the President at rates whose allowable variation shall have been fixed by law; there shall be no quotas, and no nations favored by special rates, unless by special acts requiring two-thirds majorities.

(5) To establish or provide for the establishment
68 of institutions for the safekeeping of savings, for the gathering and distribution of capital, for the issuance of credit, for controlling the media of exchange, and for regulating the coinage of money; but such institutions, when not public or semi-public, shall be regarded as affected with the public interest and shall be supervised by appropriate agencies directed by the Chancellor of Financial Affairs.

(6) To establish institutions for insurance against risks and liabilities, or to provide suitable agencies for their regulation.

(7) To ensure the maintenance, by ownership or regulation, of facilities for communication, transportation, and others commonly used and necessary for public convenience.

(8) To assist in the maintenance of world order,

and, for this purpose, when the President shall recommend, to vest such jurisdiction in international legislative, judicial, or administrative organizations as shall be consistent with the national interest.

(9) To develop with other peoples, and for the benefit of all, the resources of space, of other bodies in the universe, and of the seas beyond twelve miles from low-water shores unless treaties shall provide other limits.

(10) To assist other peoples who have not attained satisfactory levels of well-being; to delegate the administration of funds, whenever possible, to international agencies; and to invest in or contribute to the furthering of development in other parts of the world.

(11) To assure, or to assist in assuring, equal access to facilities for education; for training in occupations citizens may be fitted to pursue; and to reeducate or retrain those whose occupations may become obsolete.

(12) To establish or to assist institutions devoted to higher education or to technical training, and to provide equal opportunities for all eligible students.

(13) To establish or assist libraries, archives, monuments, and other places of historic interest.

(14) To assist in the advancement of sciences and technologies; and to encourage cultural activities.

(15) To conserve natural resources by purchase, by withdrawal from use or by regulation; to provide,

or to assist the Republics or other governments in providing facilities for recreation; to establish and maintain parks, forests, wetlands, and prairies; to improve streams and other waters; to insure the purity of air and water; to control the erosion of soils; and to do all else necessary for the protection of the national heritage.

(16) To acquire property and improvements whenever necessary for public use at costs to be fixed, if necessary, by the Court of Claims.

(17) To prevent the stoppage or hindrance of governmental activities, or of others affected with a public interest, by reason of disputes between employers and employees, or for other reasons, and for this purpose to provide for conclusive arbitration if
70 adequate provision for collective bargaining shall fail. From such findings there may be appeal to the Court of Arbitration Review; but such proceedings may not stay the acceptance of findings.

(18) To establish and maintain armed forces for the security of the United Republics; but service in them shall be voluntary except in declared emergency when uniform service may be required; but the Court of Rights and Duties may establish exceptions for reasons of conscience or religious belief.

No officer of the armed forces may appear before a legislative committee; and no subordinate of any department may appear without the consent of the departmental chancellor.

(19) To enact such measures as will assist families in making adjustment to future resources, using esti-

mates concerning population which have been made by the Planning Board.

(20) Such measures as the President may designate shall be voted on within ninety days.

ARTICLE VI

The Regulatory Branch

SECTION 1. There shall be a Regulatory Branch and there shall be a National Regulator. With a National Regulatory Board, he shall make and administer rules for such enterprises as are determined by law to be affected with the public interest.

The Regulatory Branch shall have such agencies as the Regulator may find necessary and are not disapproved by law. He shall appoint boards, not larger than seven members each, appropriate for supervising particular kinds of enterprise; and he shall appoint one member as chairman. They may be objected to by the Senate. 71

The chairmen of these boards shall constitute the National Regulatory Board, to serve with the National Regulator in making general rules for the conduct of regulated enterprises. These shall conform to the principles of fair practice, equality of service, honesty in representation, and maintenance of efficiency; they shall provide for progress through research and for protection of public interests. Such enterprises may be investigated by the Watchkeeper; and appeal from rulings may be made to the Court of Administrative Settlements.

SECTION 2. The Regulator shall charter all corporations or other enterprises except those supervised by the Chancellor of Financial Affairs or the Intendant. The Republics may charter those for intra-Republic activities; but all charters shall describe proposed activities, and departures from these shall require amendment by the Regulator on penalty of revocation.

SECTION 3. Chartered enterprises may organize joint Authorities, and these may formulate among themselves codes to ensure fair competition, meet external costs, set standards for service, expand trade, increase production, eliminate waste, assist in standardization, and maintain services of research, communication, and common use; but membership shall be open to all, and nonmembers shall be required by
72 license to maintain the standards fixed in the codes on penalty of revocation by the Regulatory Board.

All Authorities shall have governing committees of five, three being appointed by the Regulator to represent the public. They shall serve as he may determine; they shall be compensated; and he shall take care that there be no conflicts of interest. The National Regulatory Board shall approve or prescribe the distribution of profits to stockholders, allowable amounts of working capital, reserves and costs, and all other practices affecting the public interest.

All codes shall be subject to review by the Regulator with his Board; and governing bodies may be dissolved and reconstituted with approved members.

SECTION 4. Member enterprises of an Authority shall be exempt from other regulation.

SECTION 5. The Regulator, with his Board, shall fix

standards and procedures for the merger of enterprises or the acquisition of some by others; and these shall be in effect unless rejected by the Court of Administrative Settlements. The purpose shall be to encourage adaptation to change and to further approved intentions for the nation.

SECTION 6. Enterprises may be restrained by the Regulator when they restrict access to, or increase prices of, goods and services; or when their ecological effects are deleterious; and he shall see to it that external costs are assessed to their originators.

SECTION 7. Operations extending abroad shall conform to policies notified to the Regulator by the President.

SECTION 8. The Regulator shall charter non-profit corporations (or foundations) determined by him with the Board to be for useful public purposes; but this judgment may be reviewed by the Court of Rights and Duties. Contributions shall not be taxed.

SECTION 9. He shall make rules for and shall supervise storehouses for products and marketplaces for goods and services; but this shall not include security exchanges regulated by the Chancellor of Financial Affairs.

SECTION 10. Designation of enterprises affected with a public interest, rules for the conduct of enterprises and of their Authorities, and other actions of the Regulator or of the Boards, may be appealed to the Court of Administrative Settlements.

SECTION 11. Responsible also to the Regulator, there

shall be a commission appointed by the Regulator, unless the Senate object, for the supervision of public enterprises. The commission shall maintain the necessary surveillance of enterprises wholly or partly owned by the government. The commission shall choose its chairman and he shall be the executive head of a supervisory staff. He may require reports, conduct investigations, and make rules and recommendations concerning surpluses or deficits, the absorption of external costs, standards of service, and rates or prices charged for services or goods. The intention shall be that such enterprises shall be self-supporting, but exceptions may be made if the legislature agree.

Each enterprise shall have a director, chosen by and removable by the commission; and he shall conduct its affairs in accordance with the standards of
74 public service fixed by the commission.

The conduct of the commission and the activities of such corporations may be reviewed by the Court of Administrative Settlements.

ARTICLE VII

The Judicial Branch

SECTION 1. There shall be a Principal Justice of the United Republics; and there shall be a Judicial Council, a Judicial Assembly, a High Court of the Constitution, and a High Court of Appeals; also Courts of Claims; Rights and Duties; Administrative Settlements; Tax Appeals; and Arbitration Review.

Also there shall be Circuit courts to be of first

resort in suits brought under national law and to hear appeals from courts of the Republics.

Other courts may be established by law on recommendation of the Principal Justice with the Judicial Council.

SECTION 2. The Principal Justice shall preside over the judicial system, shall appoint the members of all courts, and, with the Judicial Council, make its rules; also, through the administrator, he shall supervise its operations.

SECTION 3. There shall be a Judicial Assembly consisting of Circuit Court judges, together with those of the High Courts of the United Republics and those of the highest courts of the Republics. It shall meet annually, or at the call of the Principal Justice, to consider the state of the judiciary and such other matters as may be laid before it.

It shall also meet at the call of the Provost to nominate three candidates for the Principal Justiceship of the United Republics whenever a vacancy shall occur. From these nominees the Senate shall choose the one having the most votes.

SECTION 4. The Principal Justice, unless the Senate object to any, shall appoint a Judicial Council of five members to serve during his incumbency. He shall designate a senior member who shall preside in his absence.

It shall be the duty of the Council, under the direction of the Principal Justice, to study the courts in operation, to prepare codes of ethics to be observed by members, and to suggest changes in procedure. They may ask the advice of the Judicial Assembly.

It shall also be a duty of the Council, as herein-

after provided, to suggest constitutional amendments when they appear to be necessary; and it shall also prepare the draft of revisions if they shall be required. Further, it shall examine, and from time to time cause to be revised, civil and criminal codes; these, when approved by the Judicial Assembly, and if not rejected by the Senate, shall be in effect throughout the United Republics.

SECTION 5. The Principal Justice shall have a term of twelve years; but if at any time he be disabled from continuing in office, as may be determined by the Senate, or if he resign, he shall be replaced by the senior member of the Judicial Council until a new selection be made. After six years the Assembly may determine, by a two-thirds vote, that he may not continue in office.

SECTION 6. The Principal Justice may suspend members of any court for incapacity or violation of rules; and the separation shall be final if a majority of the Senate agree.

For each court he shall appoint a senior member who shall preside.

SECTION 7. As a presiding judge may decide, with the concurrence of the senior judge of his court, criminal trials may be conducted either by investigatory or adversary proceedings, and whether there shall be a jury and what the number shall be; but investigatory proceedings shall require a bench of three.

He may also provide for pre-trial proceedings.

The rules shall preclude the putting twice in jeopardy of any accused for the same offense or punishment imposed if the accused be diseased or incompe-

tent. They shall also preclude failure to inform the accused of charges, to allow confrontation of witnesses against him, or to call witnesses in his favor; but they shall provide for the enforcement of decorum during proceedings.

The accused shall have speedy trial and competent counsel; and the court shall consider his belief that the statute was invalid or unjust.

He shall not be compelled to be a witness against himself.

SECTION 8. In deciding on concordance with the Constitution, the High Court of the Constitution shall return to the House of Representatives statutes it cannot construe, and clarification shall be made within ninety days. If the House fail to make return the Court may interpret.

SECTION 9. The Principal Justice, with the Judicial Council, or the President, may grant pardons or reprieves for offenses against the United Republics.

SECTION 10. The High Courts shall have thirteen members; but nine members, chosen by their senior justice from time to time, shall constitute a court. The justices on leave shall be subject to recall.

Other courts shall have nine members; but seven, chosen by their senior, shall constitute a court.

All shall be in continuous session except for recesses approved by the Principal Justice.

SECTION 11. The Principal Justice, with the High Court of the Constitution, shall advise the Senate when requested concerning the constitutionality of measures approved by the House of Representatives; he may also advise the President, when requested, on

matters involving constitutionality. Advisory opinions shall thereafter govern the Court's decision.

SECTION 12. It shall be for other branches to accept and to enforce judicial decrees.

SECTION 13. The High Court of Appeals may select applications for further consideration of decisions reached by other courts including those of the Republics. If it decide that there be a constitutional issue it shall assume jurisdiction. Its decisions may be reviewed, without hearing, and finally, by the High Court of the Constitution.

SECTION 14. The High Court of the Constitution may decide:

a) Whether constitutional powers delegated by the legislature to any agency are excessive or are less than necessary for its mission.
b) Whether constitutional provisions have been violated in litigation coming to it on appeal.
c) On the application of constitutional provisions to suits involving the Republics.
d) Suits involving international law as recognized in treaties, United Nations agreements, or any arrangements between members of the United Republics and other nations or their representatives.
e) Other causes involving the interpretation of constitutional provisions, except that in holding any branch of government to have exceeded its powers, the opinion shall be reviewed finally by the Senate.

SECTION 15. The Courts of the Republics shall have initial jurisdiction in cases arising within their borders except those involving the Republic itself or those

reserved for national courts by a rule of the Principal Justice with the Judicial Council.

ARTICLE VIII

General Provisions

SECTION 1. Qualifications for participation in democratic procedures as a citizen of the United Republics and eligibility for national offices shall be subject to repeated study and to redefinition by law; but any change in qualification shall become effective only if not disapproved by majority vote at a subsequent general election.

For this purpose a permanent Citizenship and Qualifications Commission shall be constituted, four to be appointed by the President, three by the Provost, three by the Speaker, and three by the Principal Justice. Vacancies shall be filled as they occur. They shall choose a chairman; they shall have suitable assistants and accommodations; and they may have other occupations. Recommendations of the commission shall be presented to the President and shall be transmitted to the House of Representatives by the President with his comments. They shall have a preferred place on the calendar, and if approved they shall go to referendum.

SECTION 2. Citizens' freedom of expression, of movement, or of communication shall not be abridged except in emergency as defined in this Constitution; but the exercise of these rights may not diminish the

rights of others or of the public; conflicts in the exercise of rights or questions concerning them and offenses against the public interest, adjudicated in courts of immediate jurisdiction, may be appealed to Courts of the Republics and to the Court of Rights and Duties.

SECTION 3. Every citizen's right to practice religion shall be guaranteed; but no religion shall be imposed by some on others; and no religion shall be encouraged by the government.

SECTION 4. The writ of habeas corpus shall not be suspended except in declared emergency.

SECTION 5. The privacy of individuals shall be respected; searches and seizures shall be made only
80 on judicial warrant; persons shall be pursued or questioned only for the prevention of crime and the apprehension of suspected criminals, and only according to rules of the Court of Rights and Duties.

No property shall be taken except for a public purpose, by due process and with compensation.

SECTION 6. It shall be public policy to promote discussion of public issues and to encourage peaceful public gatherings for this purpose; and permission to hold such gatherings shall not be denied, nor shall they be interrupted by public authorities except in declared emergency or on a showing of imminent danger to public order and on judicial warrant; but such gatherings shall be protected against disruption.

SECTION 7. Individuals and enterprises holding themselves out to serve the public shall serve all equally and shall be held to fairness in their practices; citi-

zens' complaints shall be attended to by the Watchkeeper, who may require compliance and compensation; but there may be appeal to the Court of Rights and Duties.

SECTION 8. The use of public lands, the air, or waters shall be a privilege granted only in the national interest and with restrictions imposed by authorized agencies.

SECTION 9. Any citizen may purchase, sell, lease, hold, convey, and inherit real and personal property, and shall benefit equally from all laws for the security of person and property; but he shall be equally liable to penalty, any statute, ordinance, regulation, or custom to the contrary notwithstanding, except as may be determined by the Court of Rights and Duties.

SECTION 10. No person holding any office may accept any award or title from a foreign state or its representatives except it be authorized by law.

SECTION 11. All those entering the service of the United Republics shall be chosen, under rules of service approved by law, for specific capability and without discrimination for any other reason.

SECTION 12. No person shall bear arms or possess lethal weapons except police, members of the armed forces, or those licensed under law according to rules established by the Court of Rights and Duties.

SECTION 13. Areas necessary for the uses of government may be acquired at its valuation and may be maintained as the public interest may require; valuations may be appealed to the Court of Claims. Such

areas may have self-government in matters of local concern.

SECTION 14. The President may negotiate for the acquisition of areas outside the United Republics, and, if the Senate approve, may provide for their organization as Possessions or Territories.

SECTION 15. The President may make agreements with other organized peoples for a relation other than full membership in the United Republics. They may become citizens and may participate in the selection of officials. They may receive assistance for their development or from the National Sharing Fund if they conform to its requirements; and they may serve in civilian or military services, but only as volunteers. They shall be represented in the House of Representa-
82 tives by members elected at large, their number proportional to their constituencies; but each shall have at least one; and each shall in the same way choose one permanent member of the Senate.

SECTION 16. The President, the Vice Presidents, and members of the legislative houses shall in all cases except treason, felony, and breach of the peace, be privileged from penalty for anything they may say while pursuing public duties; but the Judicial Council may make restraining rules.

SECTION 17. Except as otherwise provided by this Constitution, each legislative house shall establish its requirements for membership and procedures to insure against conflicts of interest. Each may make rules for the conduct of members, and provide its own disciplines for their infraction.

SECTION 18. No Republic shall abridge any of the rights, immunities, or liberties granted in this Constitution to citizens of the United Republics or shall interfere with its officials in the performance of their duties and all shall give full faith and credit to the acts of other Republics and of the United Republics.

SECTION 19. Public funds shall be expended only as authorized in this Constitution.

ARTICLE IX

Governmental Arrangements

SECTION 1. Officers of the United Republics shall be those named in this Constitution, including those of the legislative houses and others authorized by law to be appointed; they shall be compensated and none may have other paid occupation unless they be excepted by law; none shall occupy more than one position in government; and none shall accept any gift or favor.

No income from former employments or associations shall be put aside for their benefit; but their properties may be put in trust and managed without their intervention during continuance in office; hardships under this rule may be considered by the Court of Rights and Duties and exceptions may be made with due regard to the general intention.

SECTION 2. The President, the Vice Presidents and the Principal Justice shall have households appropri-

ate to their duties. The Vice Presidents, the Principal Justice, the Chairman of the Planning Board, the Regulator, the Watchkeeper, and the Overseer shall have salaries fixed by law and they shall continue for life; but if they become members of the Senate, they shall have senatorial compensation and shall conform to its requirements.

Justices of the High Courts shall have no term; and their salaries shall be two-thirds that of the Principal Justice; they, and members of the Judicial Council, shall be permanent members of the judiciary and shall be available for the assignment to duty by the Principal Justice.

Salaries for members of the Senate shall be the same as for Justices of the High Courts.

SECTION 3. Officials designated by the head of a
84 branch as sharers in policymaking may be appointed by him with the President's concurrence and unless the Senate shall object.

SECTION 4. There shall be administrators:

a) for the offices and official households, appointed by a standing committee of the Senate;
b) for the national courts, appointed by the Chief Justice;
c) for the Legislative Branch selected by a committee of members from each house (chosen by the Provost and the Speaker), three from the House of Representatives and four from the Senate.

Appropriations shall be made to them; but those for the Presidency shall not be reduced during his term unless with his consent; and those for the Judicial Branch shall not be reduced during five years

succeeding their determination, unless with the consent of the Chief Justice.

SECTION 5. The fiscal year shall be the same as the calendar year, with new appropriations available at its beginning; but if any remain to be acted on, provisions for the year preceding shall be in effect until action shall have been taken.

SECTION 6. There shall be an Officials' Protective Service to guard the President, the Vice Presidents, the Principal Justice, and other officials whose safety may be at hazard; and there shall be a Protector appointed by a standing committee of the Senate and he shall be responsible to it. Protected officials shall be guided by procedures approved by the committee.

The service, at the request of the Political Overseer, may extend its protection to candidates for office; and they shall conform to uniform rules for public appearances.

SECTION 7. A suitable contingency fund shall be made available to the President for purposes defined in resolutions of the House of Representatives.

SECTION 8. The Senate shall try other officers of government than legislators when impeached by a two-thirds vote of the House of Representatives for conduct prejudicial to the public interest. If Presidents or Vice Presidents are to be tried, the Senate, as constituted, shall conduct the trial. Judgments shall not extend beyond removal from office and disqualification for holding further office; but the convicted official shall be liable to trial according to law.

SECTION 9. Members of legislative houses may be

impeached by the Judicial Council; but for trial it shall be enlarged to seventeen by Justices of the High Courts appointed by the Principal Justice. If convicted, members shall be expelled and be ineligible for future public office; they shall also be liable for trial as citizens.

ARTICLE X

Amendment

SECTION 1. It being the special duty of the Judicial Council to formulate and suggest amendments to this Constitution, it shall, from time to time, make pro-
86 posals, through the Principal Justice, to the Senate. The Senate, if it approve, and if the President agree, shall instruct the Overseer to arrange at the next national election for submission of the amendment to the electorate. If not disapproved by a majority, it shall become part of this Constitution. If rejected, it may be restudied and resubmitted.

SECTION 2. When this Constitution shall have been in effect for five Presidential terms the Overseer shall ask, by referendum at the succeeding election, whether a new Constitution shall be prepared. If a majority so decide, the Council shall prepare a new draft, approved by the Senate, for submission at the next election. If not disapproved by a majority it shall be in effect. If disapproved it shall be redrafted and resubmitted with such changes as may be appropriate to the then circumstances, and it shall be submitted to the electorate.

If not disapproved by a majority it shall be in effect. If disapproved it shall be restudied and resubmitted.

ARTICLE XI

Transition

SECTION 1. The President is authorized to assume such powers, make such appointments, and use such funds as are necessary to enable this Constitution to become effective as soon as possible after ratification.

SECTION 2. Such members of the Senate as may be at once available shall convene and, if at least half, shall constitute full membership while others are being added. They shall appoint an Overseer to arrange for electoral organization and elections for the offices of government; but the President and Vice Presidents shall serve out their terms and then become members of the Senate. At that time the Presidency shall be constituted as provided in this Constitution.

SECTION 3. Until each indicated change in the government shall have been completed the provisions of the existing Constitution and the organs of government shall be in effect.

SECTION 4. All functions of national government shall cease when and if they are replaced by others authorized under this Constitution as determined by the President.

The President shall cause to be constituted a commission of appropriate size to designate existing laws inconsistent with this Constitution and they shall be declared null and void by the President; also the commission shall assist the President and the legislative houses in the formulating of such laws as may be consistent with the Constitution and necessary to its implementation.

SECTION 5. For the establishing of the Republics' boundaries a commission of thirteen, appointed by the Principal Justice of the United Republics, shall make recommendations within one year. For this purpose they may take advice and commission studies concerning resources, population, transportation, communication, economic and social arrangements, and such other conditions as may be significant. The Principal Justice shall transmit the commission's report to the Senate after entertaining, if convenient, petitions for revision. If not objected to by the Senate, his recommendations shall be in effect.

Existing states shall not be divided unless metropolitan areas extending over more than one state are to be included in one Republic, or unless other compelling circumstances exist; and each Republic shall possess harmonious regional characteristics.

SECTION 6. Constitutions of the Republics shall be established as shall be arranged by the Judicial Council and the Principal Justice.

These procedures shall be as follows: Constitutions shall be drafted by an assembly of the highest courts of the states to be included in each Republic. There shall then be a convention of one hundred delegates chosen in special elections in a procedure approved

by the Overseer. If the convention shall not reject the Constitution it shall be in effect and the government shall be constituted. If it be rejected, the Principal Justice, advised by the Judicial Council, shall promulgate a Constitution and initiate revisions to be submitted for approval at a time he shall appoint. If it again be rejected he shall promulgate another, taking account of objections, and it shall be in effect. A Republican Constitution, once in effect, shall be valid for twenty-five years, when revision prepared by its Judicial Council shall be referred to its electorate; if not approved it shall be revised again and submitted at a regular election.

SECTION 7. Until Governors General and legislatures of the Republics are seated, state governments shall continue in their functions except that the President may appoint temporary Governors General to act as executives until succeeded by those regularly elected. These Governors General shall succeed to the executive functions of the states as they are merged in the Republics.

SECTION 8. The indicated appointments, elections, and other arrangements shall be made with all deliberate speed.

SECTION 9. The first Judicial Assembly for selecting a register of candidates for the Principal Justiceship of the United Republics shall be called by the incumbent Chief Justice immediately upon ratification.

SECTION 10. When this Constitution has been implemented appropriate parts of this article shall be deleted.

1.	March	first Tuesday	Primary Day
2.	April	first Tuesday	District conventions
3.	May	first Tuesday	National conventions
4.	June	1st	Submission of plans to Planning Branch by Republics
5.	June	first Tuesday	National Elections
6.	June	fourth Tuesday	Notification of global expenditures for the next fiscal year
7.	July	second Tuesday	Convening of the legislative houses
8.	July	third Tuesday	Presidential inauguration
9.	July	fourth Tuesday	Submission of six- and twelve-year plans, together with annual budget, to the President
10.	August	first Tuesday	State of the Union Message
11.	September	1st	Submission by the President to the Senate of developmental plans and to the House of Representatives of the annual budget
12.	October	first Monday	Return of budget to the Planning Board if there be objection
13.	November	first Monday	Return of reconsidered budget
14.	January	1st	Fiscal year begins

DRAFTING A MODEL CONSTITUTION

AN INTERVIEW WITH REXFORD G. TUGWELL

Q: Mr. Tugwell, in what sense is it correct to call this the "Tugwell Constitution"?

TUGWELL: We all tend to personalize something like this. The fact is that when I came to the Center some six years ago, I adopted as my project, with the consent of everybody, a study of the Constitution or, more accurately, a study of constitutionality. As is customary at the Center, I began by writing papers and presenting them to the Fellows for discussion. These discussions produced criticisms and suggestions and these were used in redrafting and in rewriting the supporting papers. After a while, we decided that we could sharpen our dialogue and focus our discussions better if we tried to make a model. So, even though I had no legal training — being a political scientist, not a lawyer — I began to study the style and form of constitutions, and especially our own. This was not new for me. I had begun the study of constitutional law as far back as my sophomore year in college, and my doctoral dissertation had been a constitutional study. This method of procedure did sharpen our discussions. But that first draft and I should say the next ten or twelve drafts were hopelessly amateurish. The drafting was bad, and the ideas were not clearly expressed. It had to be done over and over. Gradually we did come by

this method to a much better statement of what it was we would like a constitution to be.

Q: So this model constitution is really a collaborative product, then, from many discussions and rewriting over a period of five or six years.

TUGWELL: Yes. It can be attributed to me only in the sense that I was the one who did the drafting. I took on the job of writing and rewriting what was suggested by the group.

Q: You selected the criticisms and suggestions you thought were valid and incorporated those into the model?

TUGWELL: That's right. I might say that the criticisms

I got from the late Scott Buchanan were general and quite profound. He and I had many long discussions. But the person in the group who knows most about this kind of enterprise and who has followed the Supreme Court's interpretation of the Constitution for many years is Robert Hutchins. I always felt that his evaluation of the model would be the one that would probably come closest to being the kind of thing we wanted to achieve. The model being published, I am sure, does not satisfy him completely but then it is not thought by him, by me, or by anyone to be perfected.

Q: Did you have the benefit of consultations with people outside the Center?

TUGWELL: I did at a later stage. I began to write to friends who were lawyers and teachers and asked for suggestions. They helped me technically in drafting. I should particularly mention my old friend Monroe

Oppenheimer. He was general counsel for the Resettlement Administration in the nineteen-thirties and has been a practicing lawyer in Washington since. He spent much time and gave much thought to the model. Not only that, he read all the background papers and made many suggestions. Later still, I sent some correspondents sections of the thirty-fifth and thirty-sixth drafts and asked them for suggestions. Generally, I must say, they didn't think much of the whole enterprise.

Q: Why?

TUGWELL: There is a great deal of resistance to doing anything about the Constitution at all. That resistance is all but universal among lawyers and almost as general among political scientists.

Q: Is that because they feel you're tampering with something sacrosanct?

TUGWELL: Partly that's it. Partly it is the conviction that any document that has lasted for a hundred and eighty-one years, as our Constitution has, must have permanent virtues. Another reason for contemporary resistance to a new constitution goes back to the McCarthy era of the nineteen-fifties. The feeling was that anything done to the Constitution must turn out to be bad, that, for example, our Bill of Rights would probably disappear. The feeling is that the present Constitution protects essential liberties. Of course, we don't want to give them up either. But I think there are good reasons for feeling that there ought to be an expansion. In the first place, the present Constitution says a great deal about what the government may not do. That, of course, is exclusively a protection of citizens *from* government. It says nothing about the duties

of citizens *to* government. We have reached the stage, I think, where the Constitution should require that citizens make contributions and have duties as well as be protected.

Q: You're willing, then, on the basis of that conviction, to take the risk that a new constitution might be captured by reactionary elements in our society?

TUGWELL: You put that in a way that we never allowed ourselves to put it in our discussions at the Center. We never allowed ourselves to think that we were drafting a constitution that would ever be adopted as written by us. We thought of our drafted model as an instrument for sharpening our discussions and our thinking about what a constitution should be and do.

Q: Now that you have finished it, though, are you getting excited about the possibility that it might actually be thought of as a viable document, as . . .

TUGWELL: It's not finished. The thirty-seventh draft of it is about to be printed. But I would hope that the discussion of it would go on and on. For example, I believe that the definition of a citizen's duty to his country should be somewhere in the Constitution. We have tried to do that in our model; we did it one way. But I don't know if that is the best way. It doesn't seem too bad at the moment, but I am sure others will have different suggestions.

Q: Though your constitution is not finished and, in a sense, can never be, you have it in a pretty good form now. Has the thought crossed your mind that perhaps it could become something more than a model or a discussion instrument?

TUGWELL: Anything you have worked over as long as I have worked over this, and anything that has been discussed and criticized for so long a time is bound to be thought pretty good. But I must quickly add that I thought that same thing back about the twenty-fifth version or so, and that I changed my mind and made substantial revisions in subsequent drafts.

Q: At the time you began work on this six years ago, it must have seemed to some — at least to some conservatives — to be an outrageously radical idea. Today — the pace of political life being what it is — it must seem to many young radicals insufficiently radical. Your project seems to be an effort, within the system, to make democracy work. Would you agree that your project is within the mainstream of the American political tradition?

TUGWELL: I think the project is radical in the sense that it makes many departures. But I don't consider that it is radical in the sense of abandoning democratic traditions. It seems to me that any changes that come in the United States will have to end up as some kind of democracy. It may not be the one defined in our model. But I think that in the end the principles of equality and justice will prevail and that there must be a government capable of carrying out the duties we expect of it.

Perhaps some young people might think it is not radical enough, but I would call their attention, for instance, to the practical giving up of states' rights. What you must remember is that the original document was a series of compromises and not necessarily satisfactory ones. One of these compromises was that the states kept residual sovereignty. In our draft constitution, the central government has the residual power because it

has gradually become apparent that, with the spread of technology, the conquest of the continent, instant communications, and swift continental transportation, the states have become obsolete as operating entities. To regard them as sovereign any longer is anachronistic.

Q: In essence, then, what you are trying to do is make democracy work, make it more effective.

TUGWELL: Yes. I am afraid I am a convinced democrat; I think we all are. I don't see any other way for individuals to have equal opportunities — both political and economic — or see how the system of justice, so deep in our tradition, can be made operative by any other political arrangement.

Q: If your constitution is meant to replace the present Constitution, it does represent a clean break. What effect do you see that having on the national consciousness, the national memory, the national tradition? Is it possible that people might feel they have been cut adrift because they have thought of the Constitution as a kind of rock on which they had been standing?

TUGWELL: Again, that question is based on the assumption that we expect this draft model to be taken *in toto* and substituted for the present Constitution. That is not the way any constitution I have ever heard of was shaped. This model is merely a collection of suggestions about what ought to go into a constitution adequate for the contemporary situation. In more optimistic moments I think of ourselves as being like Madison, who after years of study formulated the Virginia Resolutions.

Q: But you are not suggesting that the way to get a

new constitution is to graft, say, this model onto the present one?

TUGWELL: No. But it could happen that the present system of government would prove so obstructive and would fail so abysmally to meet the needs of a continental people and a great power that general recognition of the crisis would occur. There might then be a redrafting of the basic law, and, if so, then it might be that this model we have worked over for a number of years might be taken into account. We are really much more modest about this than people who do not like to hear anything about changes in the Constitution think we are.

Q: A central problem in any constitution-making, or constitution-building, seems to be the problem of power, how power is distributed in a society, what restraints should be imposed on power, how power can be channeled for the greatest public good. How does your constitution meet that problem?

TUGWELL: Power is something that can't be modified; it can be distributed and restrained but not modified. Each person has certain powers, and it is recognized that each person's power must be restrained so that he can get along with other people. It is the same with government. The government must have certain powers. The question is how well these powers are used and how they are distributed among those who use them. In our draft, we have kept the old principle of separation that is so basic to our present Constitution. That principle goes far back in Western tradition; the separation of executive, legislative, and judicial powers is not a recent invention. The difficulty with the distribution of those powers in our present Constitution is

that the framers left too much to be decided in the future. There were too many silent areas, too much "no man's land." As time went on, of course, this led to a kind of invitation to competition for power between the three branches of government. That competition has occasionally turned into something like turmoil. I think that the distribution of powers can be defined somewhat more usefully than in the framers' draft and we have tried to do that.

Q: How do you answer the criticism that your model constitution may be too detailed, that it tries to anticipate too many difficulties and problems of government?

TUGWELL: We tend to think today that the agreement in 1787 about the Constitution was much more unanimous than it actually was. The 1787 convention was a tumultuous one. The framers, in the interest of compromise, actually left a great many things undone; a lot of things were left to future development simply because they could not agree. So what people today call the "admirable brevity" of the 1787 Constitution was not quite that, I think. It simply left too much to be done without any clear authorization or deliberation in origin; and it has been necessary for the Supreme Court to do what the framers did not do. For easier accommodation, the amending clause in the 1787 Constitution should have been made clearer and the amending process better arranged. As matters turned out, by consigning the amending process to legislatures alone, the framers turned it over to what became the most obstructive branch of government. We have tried to correct that in our model.

If we have succeeded in making amendment easier and more responsive to changing circumstances, we

will also have succeeded in making it unnecessary for the Supreme Court to legislate, in effect, through its decisions, or to interpret what Congress means when it passes laws. The Supreme Court should not be what Chief Justice Warren Burger said recently it is in the way of becoming: a continuing constitutional convention.

Q: By making constitutional amendment easier, do you invite the danger of constant tinkering with the document?

TUGWELL: I don't think so. The model provides for the Principal Justice, working with the Judicial Council and the Senate, to initiate amending proposals when they seem appropriate. They send these proposals to the President and he may then authorize the Overseer to submit specific amendment proposals to the electorate in a direct referendum. Consideration of need for amendment would be constant.

Q: You may have, then, a great many amendment proposals on the ballots, but the people may not actually adopt very many of them.

TUGWELL: I wouldn't expect that there would be a lot of them. But I would think it would be easier in our model to make a judgment as to new situations that may require amendment. And, of course, as I say, our draft does not authorize the courts to interpret what a law says. We provide for the court to send questionable legislation back to Congress to get an explanation. Of course, if the Congress ignores that request, the Court may act; but it was not our intention to prevent the Supreme Court from interpreting the Constitution. Our model does provide that when the powers

of another branch of government are affected, or might be affected, by a Supreme Court decision, that has to be checked and scrutinized by the Senate; but the constitution is in the custody of the Court just as it is now.

Q: Then your chief argument for a more detailed constitution is that by not being silent in so many crucial areas — as the 1787 Constitution is — you make it unnecessary for the Supreme Court to interpret, or to engage in legislation-through-interpretation, or to fill the vacuum of those silent areas.

TUGWELL: Exactly.

Q: If your model effectively prevented the deleterious concentration of political and economic power and if it also provided citizens not only with protection from the abuses of governmental power but also with the opportunity really to get into the political process, that would go a long way toward meeting the objections of young people in particular, many of whom have given up — at least temporarily — the effort to affect the political life of this country. For example, among the powers and functions of the Watchkeeper in your constitution he must check on the competence and integrity of governmental agencies and receive and act on citizen complaints about abuses of power.

TUGWELL: Democracy is not democracy unless there is participation in it. On the other hand, I haven't seen any way to escape majority rule. But, of course, the majority ought to be a real majority, arrived at after due discussion. The Watchkeeper ought to keep the majority from being arbitrary.

Q: In that connection, the Electoral Branch provided for in your constitution tries to prevent the corruption of the political process by, among other things, making campaign funds equally available to qualified candidates.

TUGWELL: The trouble with our political parties is that they do not produce actual majorities, only nominal choices between candidates selected in a most undemocratic process.

Q: What do you think are the main reformist effects of your Electoral Branch?

TUGWELL: You have already mentioned one of them: our model provides that all campaign expenditures be paid for out of public money, and there are very strict limitations on private expenditures on behalf of candidates. This should have the effect of making it impossible for elections to be in effect bought by large contributors who expect to get something back from successful candidates for having contributed money to their campaign.

Q: But no constitution can prevent private citizens from spending their money, if they wish to, on behalf of particular candidates, can it?

TUGWELL: That's right, but we do require that any activity of that kind be publicly reported so that the people may know who is interested in which candidates and to what extent. Another thing our model does is make it compulsory for the electoral machinery to permit and facilitate public discussion of the great public issues. No government can force people to be-

come interested in a political campaign or to take part in the discussion and study of the issues. But I think we have gone as far as is possible in making such discussion possible.

Q: By bringing political parties, as such, under constitutional law in your model you would have the effect of holding them to some standards of fairness and responsibility.

TUGWELL: Yes. The framers in 1787 did not believe in partisanship. They didn't provide for political parties at all. They only provided an electoral procedure for the Presidency. The framers also provided that the states should determine the processes of congressional selection. The federal government was empowered to do something about that, but it never has; we have made it mandatory.

Q: Do you think your constitution does enough to tackle the task of informing public opinion? The notion that in a self-governing democracy the people will judge, and correct, and direct their leaders depends for its practical validity on the quality and quantity of the information the citizens get on the great public issues, the public affairs of the day. Until now, we have left this informing process to the commercial media — newspapers, magazines, radio, television. The commercial media have proved that they can do a superior job of informing the people on public affairs, but they have also proved to be inferior and spotty. Do you see any need for, say, a kind of public information service, funded but not controlled by the federal government, to supplement the commercial media?

TUGWELL: I think that would be a very good thing.

The British Broadcasting Corporation was set up for that purpose but, you know, the British decided, especially after the coming of television, that it would not be good for government to have a monopoly over the communications media. So they did provide for the establishment of an independent television network along with the B.B.C.

Q: I was also thinking of the print media.

TUGWELL: I don't think we have a problem there. I've felt that way ever since I saw what happened to F. D. Roosevelt. Eighty-five per cent of the press was against him, but the people said that if the newspapers are against him, he must be all right. People are a little more sophisticated and intelligent than we give them credit for being in these matters.

Q: I was thinking not so much about the press's editorial positions as I was about their informing function. It happens so often, for example, that quite important hearings are held in Washington on grave public issues, and the commercial media do not even bother to attend them much less make an effort to file an intelligent report on them. As a result, the citizens just do not receive the information they need in order to form an intelligent and critical public opinion on the issues.

TUGWELL: The only alternative is to have the government put out the information and then it would be only what it wanted to be seen or heard.

Q: That is the question: Do you think the government could fund a public information service but be effectively prevented from controlling the content of it, or

"managing" the content in a kind of self-serving way?

TUGWELL: I suppose it could. We see it in education. We hear a great deal in this country from some school officials about the evils of governmental control. The British have been successful, however, in their governmental support of higher education without the government controlling the curriculum of the schools. They have a university grants commission in Britain. It distributes public funds to the colleges and universities. The commission is appointed with long terms, and appropriated funds are simply handed over to the commission and the government has nothing more to do with them. So it is quite possible to have government support without political interference.

Q: Do you think your constitution should spell this out so far as the communication of public-affairs information is concerned?

TUGWELL: I have thought about that and I have talked with other people about it and the opinion has seemed to be that we had better not try to specify that the government can do any particular thing in the information field.

Q: As you may know, there is considerable talk in Washington these days about the Administration's access to and increasing use of the national television networks to present its point of view to the American people on the controversial issues of the day. The argument one is hearing (from the Democrats of course) is that the networks can only properly and responsibly serve public opinion by making their facilities equally available to proponents of differing points of view. The Vietnam war issue is perhaps the most dramatic

example of an issue on which Democratic senators — like Muskie, McGovern, and others — claim that the networks are doing the public a disservice by refusing to make free time, or even purchasable time in some instances, available to opponents of the Nixon Administration's policy.

TUGWELL: What you are asking for is to have the President engage in a running controversy with every senator who wants to challenge him. I think senators get plenty of exposure the way things are, maybe too much for some of them.

Q: Do you see any danger that a President can manipulate public opinion through his unlimited access to free time on the television networks and thus entrench himself and his party in power?

TUGWELL: I think the opposition to Mr. Nixon at the present moment is pretty well stated and publicized. A President should not be forced to have a running argument with Senator McGovern or Senator Muskie or especially the chairman of a national party.

Q: How does your model handle the problem of Presidential accountability?

TUGWELL: It doesn't.

Q: Do you think it should?

TUGWELL: The reason the British, for example, have their practice of "questions" for the Prime Minister is because the Prime Minister is a member of the House of Commons. We have opted for a tripartite government with separated powers. So it is the President's

option when he wishes to submit himself to questions. Presumably he has to keep public support and if he has to keep public support he explains himself to the people.

Q: But in the intervals between elections, a President can be quite derelict in how he discharges that accountability responsibility.

TUGWELL: But he really can't. I mean, look what happened to President Johnson. Public opinion in this country organizes itself so powerfully that nobody can withstand it. You can't make a President better than he is. You could have a better selection process and perhaps get better Presidents; but having got one he cannot be continually harassed.

Q: Of course, in your model you do provide for the forcing of deliberations on the President, but forcing him to deliberate is not the same as forcing him to render an accounting of his stewardship at intervals.

TUGWELL: That's right.

Q: In that connection, you have objected strenuously to the amendment of the present Constitution limiting the President to two terms on the ground that he then becomes, in his second term, a lame duck and therefore a rather ineffectual President. He lacks leverage with the legislative branch because the legislators know he will be out of office at the end of the term. Yet, your draft constitution provides only one term of nine years for the President. Wouldn't you have the same kind of problem in that setup?

TUGWELL: You would if the President were expected

to do the same things under our model as he has been expected to do until now under the present Constitution. Some of the extraordinary powers the President has assumed in past crises would, in our model, be performed by the Senate. Also the President would not be expected to be a party boss as he is now. He would be expected to be a public leader who would take the lead in legislation as well as in formulating strategy for foreign and domestic policy. Further, the President of our model would not be expected to administer these policies in detail as he is expected to do now, but really can't. Finally, we have in our model provision for a referendum after a President has been in office for three years.

Q: So that puts some pressure on him to be accountable and responsive?

TUGWELL: Yes. If we get a President who is not performing the way the people think he should, three years is long enough to find that out. If sixty per cent of the voters think he has not performed well, he will be rejected in a referendum.

Q: Then the power a President has, the leverage he has, is only what he can generate out of his own qualities of leadership.

TUGWELL: A President gets his power from the people. He can't get it anywhere else. No constitution can give it to him. If he can't carry the people with him, as Lyndon Johnson found out in 1968, he has to give up.

Q: In your formula for qualifying political parties and candidates for public campaign funding, do you see any danger of splintering? You provide funding for

any party that can get two per cent of the votes in each of thirty per cent of the districts of the nation.

TUGWELL: I believe in the two-party system. I think it works better than splintered parties as they are found in some other countries, Italy and France, for instance. On the other hand, I don't think that third parties should be prohibited. I think that when they have been formed in the past and got considerable popular support, they have, in general, had a good effect on the two major parties. Often they have caused cleanups in policy — as the Henry Wallace campaign did in Truman's case.

Q: Of course, your formula would qualify a George Wallace party if it got only two per cent of the vote in thirty per cent of the country. His campaign then would be given government funding.

TUGWELL: It should. If that's what the people want, he should get such funding. This is a democracy. Just because some of us do not like a particular party or man we should not shut him out of public life.

Q: That must be part of the risk of democracy, then, the risk, in your constitutional model, of funding a demogogue?

TUGWELL: Now that is a very fine distinction. When you are speaking of politicians, who is a demagogue and who isn't?

Q: But you don't see this as leading to a splintering effect among political parties?

TUGWELL: No. It does allow for third parties but it

makes them earn their way. Our draft provides that they must get five, ten, and fifteen per cent of the vote in the three subsequent elections or they will lose their public money for campaigning.

Q: Your model provides for a number of branches (planning, regulatory) and offices (of Watchkeeper, Overseer, Regulator) which, as far as one can determine, have only recommendatory functions and powers. Do you think you have empowered these branches and offices sufficiently to overcome what has been one of the great defects in the history of, say, regulatory agencies in this country, namely, that the regulators tend to be controlled by the very industries, associations, and agencies they are supposed to regulate?

TUGWELL: One of the difficulties in the past has been that a President could appoint members of regulatory agencies but he could not dismiss them; that has limited the control any President has of the agencies. It is quite accurate to say that, historically, when regulators are first appointed they do some real directing of the industry they are charged with regulating, but gradually they become more supporters of their industry than controllers of it. Part of the reason for that is that these agencies are extra-constitutional. They do not appear anywhere in the present Constitution, so it is very difficult to find for them any general principles or any general control.

Q: So by simply putting planning and regulation in your constitution, you are already giving those agencies some constitutional authority.

TUGWELL: Yes, they are, in our model, brought into the basic law. Regulatory agencies are now so much a

part of our system that we could not have a pluralistic society if we didn't have them. The alternative to free enterprise regulated by government is, of course, state socialism.

I happen to believe there ought to be more public ownership than there is. I would have said that many years ago the railroads ought to have been taken over by the national government. Now, it seems, they are going to have to be taken over because they are bankrupt. I wouldn't be surprised if the communications systems were nationalized as well. But this leaves a great deal — the steel industry, automobile industry, the textile industry, for example. No matter how they are allowed to get together for management purposes (and our constitutional model permits that), they can still operate without government interference if they behave properly.

Q: How does your constitution keep the regulators from getting the notion that they are playing on the same team as the industries they're supposed to be controlling?

TUGWELL: In our model there is provided a general regulatory organization not tied to the industries but to a branch of the government. It is provided that the industries will be controlled by regulatory boards and these boards have their rules and regulations from Congress. They simply have to administer them. Even in the industries that are allowed to have self-government, so to speak — joint authorities or groups of chartered enterprises within single industries — their governing bodies would have a majority of public members (three out of five). The public is considered a senior partner in these organized groups.

Q: And your constitution does provide supervisory powers. The Watchkeeper, for example, has something to say about how the agencies are performing, doesn't he?

TUGWELL: Yes. He has investigatory powers and he can make public his findings. So I think we have gone about as far as we can go in the direction of regulation and still leave some independence for individual and corporate initiative.

Q: What does your constitution do to meet the problems of science and technology, the problem of how to control the effects of science and technology without hampering the scientists' and technologists' legitimate freedom to experiment and investigate?

TUGWELL: That is meant to be taken care of by the Planning Branch in our model. Its main responsibility is to anticipate what the technologists are going to produce, try to get it discussed twelve years ahead, ten years ahead, five years ahead; and in those years of continuing public discussion, there should emerge some kind of public view of what ought to be done. Then this is finally incorporated in the operating budget. This should not hamper the scientists and technologists, but it should bring their inventions and proposals within a generally agreed policy.

Q: In your desire to prevent the notorious kind of House obstructionism that has too often marred national government in this country, your constitution provides, for example in a budget conflict between the House and the Planning Board, that the Planning Board's will shall prevail unless two-thirds of the House

overrides its recommendations. Are you perhaps too fearful of simple majority rule? What is wrong with a simple majority rule? Would that lead us back to the old obstructionist tactics again, necessarily?

TUGWELL: I can't speak in absolute terms on this, but I supposed I borrowed this two-thirds rule from my experiences in New York City and Puerto Rico. That is what we did there. We found that a simple majority is not enough because frequently there is a very close division in a legislature, and then two or three members can decide an issue and two or three are more easily influenced than, say, twenty or thirty. I don't have any qualms about the Planning Board having power because it is what we call, in professional terminology, a para-legislative body. Its recommendations will have been through a considerable legislative process before they ever get to the President and the larger legislature for approval.

Q: How do you envision the President's function in your model? On first reading, it seems you have taken quite a few powers from him and left him with the task of being the inspiration and leader of a nation but with rather limited authority.

TUGWELL: We have not limited his authority, only his duties. What has been taken from the President is what our present Constitution gives him by calling him the "chief executive", meaning that he must try to run everything. Well, in George Washington's day, he probably could do that because there wasn't much to run except the Army and the Navy. But today with the enormous bureaucracy in Washington, with hundreds of thousands of workers and agencies and all the services we now expect government to provide, the Presi-

dent simply cannot do it. So we tried to delete those executive duties from his immediate responsibility leaving him only the overall responsibility for shaping general strategy — both in domestic and foreign affairs. One of the duties he must not escape is the initiation of legislation. That is a duty the Presidents have assumed over the years, though it is not authorized in the 1787 Constitution. It is authorized in our model, recognizing the experience of years.

Q: You do not provide for labor organizations in your constitution.

TUGWELL: Not specifically; but it is not necessary. We have provided for what amounts to final arbitration if workers and industry cannot come to an agreement and a strike is imminent in a very important industry — say the postal service. We provide for settlement by a public board. This may be done after all other means are exhausted. Labor may, of course, organize, and will be authorized by legislation, but no specific clause in the constitution is needed for any sort of organization unless it has potential for harm; then it may be regulated. It has always to be remembered that there is a distinct difference between constitutional and statute law. A constitution should say nothing it is not essential to say.

Q: It seems that you give considerable power in your constitution to the Senate, both in the way it is set up and in its functions. What was your thinking on that? For one thing, the members of your Senate would be appointed, not elected. And they have life terms.

TUGWELL: That is only relatively true. They are appointed, but many of them would have had to have

been elected to some other office in the past, or would have received a substantial percentage of support from the people in national elections. Most of its members would have proven themselves and I would argue that such a Senate would be more representative of national interests than the Senate we now have. A young man who has risen to the head of a youth group, for instance, didn't get there by accident, or because of his birth or wealth; he got there because he had ability. We would hope our Senate would have only such people in it and that overall it would be more widely representative than the present Senate.

Q: Your senator would have a lifetime tenure.

TUGWELL: Yes, just as at present judges and generals do. Our fundamental intention in creating this kind
120 of a Senate has been to create what we do not now have, a legislative body whose central interest will be in the nation, not a state or a district. I have been impressed by the way senators hold themselves out as the custodians of the national interest while actually really taking care of Missouri or Arkansas or Michigan. It is not because the senators do not care about the whole country; it is because the Constitution does not encourage them to think about it. They are encouraged to consider first their home states or districts. There should be representation, somewhere, of the national interest. That is why our model gives senators life terms and why they must agree never to have any other interest.

Q: How can the nation be protected against an unscrupulous senator in your setup? What kind of safeguard do you provide against the senators themselves being corrupted or influenced by special interests?

TUGWELL: There are the usual impeachment proceedings, but under our model no senator would have any interest in doing anything of that sort. Even under our present system, the subversion of legislators is much more subtle than simply handing over money to them for their votes.

Q: But you are reposing great faith and trust in that body, aren't you? And you give it considerable power. For example, the Senate, under your constitution, can prevail over the President in disputes over the six-year and twelve-year plans; it can block the Overseer on certain occasions; it can force advice on a President and make that advice public; it can block treaties; it can block the Principal Justice's recommendations for boundaries for the new republics.

TUGWELL: But the Senate would have no power to initiate legislation. It would have only a blocking power — for example, a thirty-day delay on proposed legislation. This would result in more deliberation. And if the Representatives really wanted legislation they could pass it over the Senate's objection. The Senate's real power is a sharing with the President of his powers, and it is a real sharing. It is generally agreed, I think, that now the President has too much power; and some body, with only the national interest in view, must share it with him, if it is to be restrained. You will notice that the Watchkeeper is responsible to the Senate. The Watchkeeper is, of course, just another name for ombudsman. The ombudsman's function is probably more appropriate in the smaller countries where it has been found in recent years — notably in the Scandinavian countries — than it is in a country of our size and complexity. But I think we have made the Watchkeeper's duties wide enough in

our model so that it is not likely that he will spend his time looking for trifling peccadilloes inside of a department. He is much more likely to discover that the department is not doing what it ought to do for the people, and to make that public.

Q: How large a group do you think your Senate would be?

TUGWELL: Between seventy and eighty.

Q: And you think of the senators as kind of elder statesmen, experienced and elder statesmen?

TUGWELL: Not elder statesmen in the sense of age. But experienced people, knowledgeable, accepted by substantial constituencies, and proven to be devoted to the national interest. When an individual accepts a senatorship, that ends his participation in other activities of a private sort. The senatorship is accepted as a public duty. There is nothing to gain by accepting anything from anybody. Private holdings are put in trust. A senator cannot get rich, but he won't be poor either.

Q: So what your constitution does is remove, as far as it is possible, the temptations for a senator to be venal.

TUGWELL: Yes, that is our intention, to remove temptation and to focus the senator's attention on national problems.

Q: Why do you have republics instead of states? And do the states lose all their identity under your constitution?

TUGWELL: The states have become, administratively at least, obsolescent, partly because there have been so many nationwide developments in communications, transportation, welfare programs, and, of course, large corporate enterprises. These have thrown more and more responsibilities on the central government. State lines are, for all such organizations, irrelevant. Our welfare system arose out of a recognition that the resources of the whole nation must be shared equitably by all the people in the nation, not only by those people who happen to be living within the state where particular resources originate. What was needed was larger units of administration in the interest of the general welfare. And what was also needed was the regulatory power of a national government because business and industry of all kinds have long since escaped state control.

It is also necessary to set up governmental administrative units using modern management processes, and the individual states just do not correspond to those necessities. So, even if we did not abolish the states as political units, we would have to abolish them as administrative units in order to get some kind of administrator for government enterprises.

Q: Do the states simply disappear in your model?

TUGWELL: In the ordinary vocabulary of international law, a state is a nation, but, of course, our states are not nations. I prefer the term "republic" for a grouping of states which would be administratively viable. The states would continue to have an identity within the republics but no real duties.

Q: Do you have a formula or description of what constitutes the administrative viability of a republic?

Shouldn't other things be considered ingredients also of a republic, such as regional similarities, tradition, history?

TUGWELL: It has proved very difficult to determine the principles that would guide us in setting up republics and regions. They don't come out at all clearly. What does come out clearly is that states are not appropriate. Some larger unit is needed. What is also clear is that some smaller unit than the whole country is needed. So we have to experiment with this. I haven't thought we should make a complete commitment. We deliberately left that to be determined as provided in our draft; but we are making studies of it and hope to reach some criteria that will be of use.

Q: What in your constitution would prevent a repetition of America's intervention in Vietnam and Indochina?

TUGWELL: In our model, the President cannot declare an emergency and then do as he pleases in foreign affairs. Only the Senate can declare an emergency. Of course, even under the 1787 Constitution, the President had no power to declare emergencies; he just assumed that he could and it was recognized. Our model forbids the deployment of armed forces abroad except with Senate approval. But we are living in an atomic age,. and some provision is included for the President to act in the event of an imminent catastrophe.

Q: How does your constitution enable or encourage the United States to play a coöperative and contributing, rather than domineering, role in the international community? Does it facilitate American efforts to contribute positively to a world order, world peace, world

justice? Your document does say that the House of Representatives shall "assist in the maintenance of world order." Did you and your colleagues give much thought to this?

TUGWELL: We gave a great deal of thought to that question. But it is difficult to define what our nation ought to consign to a United Nations, should a United Nations exist, because we don't know what that would be. That has to remain for definition. About all that is possible is to express goodwill about joining any international efforts that there may be. It is clear that aid given to other nations should be much more international, or multilateral, than it has been.

Q: Is there anything else you wish to say about this draft constitution, anything you think is especially noteworthy or significant about it, or about the spirit in which it was undertaken?

TUGWELL: Perhaps I may be allowed to say, finally, that we have been guided throughout by two principal considerations. The first was to try for an embodiment of essential American beliefs in the suggested basic law — the kind we have in our saner and more reflective moments, the kind we profess when explaining ourselves to others. These are, I think, equality of opportunity; substantial justice; liberty to act and to undertake enterprises provided they do no harm; fair sharing of our affluence; decent respect for the rights and feelings of others, not only at home but in the rest of the world; and affirmation that there are no racial or cultural inferiors, only differences.

The second consideration has been to acknowledge and contain our expanding technology with all its

power for good — and for evil too. At the same time we recognize the necessary scale of modern enterprise and encourage experiment with methods for its management.

Both these are sometimes described as pluralism, or more accurately as diversity within unity, justice with order, sharing with the obligation to contribute. However described, they are the essence of democracy.

You will, perhaps, see what I am trying to say: we have thought that here we have a unique society, developed over a long time. But the government of that society has been allowed to become, in some respects, obsolete and obstructive. We would like to see it express more completely and precisely what it is Americans want themselves to be and do, and to be more accommodative to external change.

We think we have been as American as apple pie,
126 but made with the best apples and baked in an electric oven, not one attached to an old firewood stove.

The vital processes of a nation are in some ways like those of an individual — they progress, they cannot be arrested. And, hard as anyone may try, revision can only go so far; eventually institutions must disappear as individuals do, giving way to new generations.

Democracies ought not to congeal as dictatorships must; their nature is various and adaptable. They may go on into new years and centuries with new institutions, but without losing old values, old beliefs, old commitments to mutual respect. Their basic law ought to make this possible.

EDITOR'S NOTE: What Americans meant to do, after years of unrest as colonists in the British Empire, was defined in two papers: one was their Declaration of Independence in 1776, and the other was the Articles of Confederation in 1781.

If they were to become independent they must have their own government.

Although five years separates the Declaration from the Articles, both documents were the result of one resolution on June 7, 1776. Acting for the Virginia legislature, Richard Henry Lee moved the following resolution in the Continental Congress:

Resolved, 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.
That it is expedient forthwith to take the most effectual measures for forming foreign Alliances.
That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.

An informal vote taken on the first question disclosed that seven state delegations were in favor of independence and six were either opposed or not empowered by their legislatures to act on the matter. At the urging of the more cautious members, the Congress suspended debate on independence until July 1. A Committee was appointed to draft a document justifying independence. Its members were Benjamin Franklin, John Adams, Thomas Jefferson, Robert Livingston and Roger Sherman. Another Committee, headed by John Dickinson, was appointed to draft a plan for government.

The Committee to justify independence met at once and entrusted Thomas Jefferson with the drafting. The document, approved by the committee, was presented to the Congress on June 28.

On July 1, debate was resumed and lasted most of the day. John Dickinson made a plea for delay, partly because he, like many others, still hoped for concessions from Britain, and partly because he felt that the plan for government should be ready before independence was declared. A vote showed that nine states approved independence and four states withheld their approval: South Carolina was opposed because its delegates were not certain about their authority; New York abstained for lack of instructions from its legislature; Pennsylvania was opposed because its delegates were sent to the Congress by one legislature and

authorized to vote on independence by another legislature; Delaware's two delegates were divided.

On July 2, another vote was taken. This time the resolution was passed without dissent. South Carolina had switched its vote entirely; a delegate had arrived from Delaware breaking the tie; John Dickinson and Robert Morris of the Pennsylvania delegation had withdrawn from the Congress permitting the state to vote for independence; New York had again abstained for lack of instructions.

After the vote, the Declaration was debated for two days and was somewhat amended, the most notable change being the condemnation of George III and the British people for fostering and defending the slave trade. Thus amended, the Declaration was finally adopted by the Congress on July 4.

R.G.T

DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

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 c Government becomes destructive c these ends, it is the Right of the Peopl to alter or to abolish it, and to institut new Government, laying its foundatio on such principles and organizing it powers in such form, as to them sha seem most likely to effect their Safet and Happiness. Prudence, indeed, wi dictate that Governments long estab lished should not be changed for ligh and transient causes; and accordingl all experience hath shown, that man kind are more disposed to suffer, whil evils are sufferable, than to right them selves by abolishing the forms to whic they are accustomed. But when a lon train of abuses and usurpations, pur suing invariably the same Objec evinces a design to reduce them unde

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 legislature.

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 Mur-

ders 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 Legislature, 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 compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy 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 endeavoured 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, appeal

ing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by 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.

[Signatures omitted]

THE ARTICLES OF CONFEDERATION

EDITOR'S NOTE: A month after its organization, the Dickinson Committee presented its plan for confederation to the Continental Congress. The chairman, John Dickinson himself was no longer a member of the Congress and took no part in the debate over his plan. After the document had been pared down somewhat, it was introduced for debate on August 20. The main thrust of the draft was carried in the article defining the powers of the states:

Each State reserves to itself the sole and exclusive regulation and government of its internal police, in all matters that shall not interfere with the articles of this Confederation.

The subjects most debated were these: (1) the proposal that each state would continue to have one vote in the Congress; (2) that the Congress might not levy direct taxes but must rely on the states to furnish funds proportional to its population; (3) that the Congress should have the power to limit the boundaries of those states with western land claims and to dispose of those lands "for the general benefit of all."

Since Dickinson had retired from the Congress, there was no one who could speak convincingly about the document, and the debate disclosed that there was a general hesitancy about adopting it. Moreover, the debate was discontinued after a month for lack of a quorum, a habit of the Continental Congress that indicated

the reluctance of the States to cooperate.

In April, 1777, Thomas Burke, representing North Carolina, one of the earliest states to press for united independence, offered several amendments to the document. The first of these concerned the powers of the states:

Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States, in Congress assembled.

This required other changes: (1) that each state was to continue to have a single vote in the Congress, but (2) that taxation was to be levied by the states for the national government using quotas based on land and not on population, and (3) that the Congress was to have no authority to regulate western land claims.

In this form, the Articles were adopted on November 15, 1777 and sent to the states for ratification; each state's approval was necessary for implementation.

The Articles of Confederation not only represented a victory for state sovereignty in principle, but gave considerable advantage to the landed states, or those states whose western boundary was not defined. The opposition to ratification developed accordingly, North Carolina and Virginia, both landed states, taking the lead by ratifying almost immediately, and such states as Pennsylvania and Maryland showing less willingness to ratify.

By May, 1779, all the states but Maryland had ratified the Articles. Maryland had hoped to improve the position of its land companies by refusing to ratify until a western land policy should be adopted by Congress. The situation remained deadlocked for about a year, each side vying for a stronger claims position when the Congress took up the matter.

In February, 1780, the legislature of New York, a state with the vaguest sort of land claims, broke the deadlock by authorizing its delegates to restrict the western boundaries. The Congress declared on September 6 that this move was an act meant to "accelerate the federal alliance" and urged other landed states to follow suit. The Southern states were once again in a nationalist mood and most of the landed states ceded their claims to the United States. Virginia finally agreed to cede lands north of the Ohio river, if all private claims were dropped as well.

On October 10, 1780, Congress passed a resolution stating that all lands ceded to the United States would be disposed of for the common benefit of the United States and formed into new states enjoying the same privileges as the original thirteen. Maryland having won this point, began to move toward ratification of the Articles. The final nudge was provided by France when French aid to protect Maryland's Chesapeake Bay from British invasion was made conditional upon Maryland's ratification.

The Articles of Confederation, already battered before ratification, fin

ally took effect on March 1, 1781 when Maryland agreed. The western land policy, the main obstacle to their ratification, it later turned out, was one of the few provisions of the Articles of Confederation to be incorporated into the Federal Constitution of 1789.

The characteristic of most importance, the one that resulted in a convention six years later to "form a more perfect union," was the retaining by the states of the sovereign powers necessary to a central government.

R.G.T.

ARTICLES OF CONFEDERATION

Proposed by Congress November 15, 1777
Ratified and effective March 1, 1781

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America, in Congress assembled, did, on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the words following, viz. "Articles of Confederation and perpetual Union between the states of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

ARTICLE I

The Stile of this Confederacy shall be "The United States of America."

ARTICLE II

Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III

The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restrictions shall be laid by any state, on the property of the united states, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdeameanor in any state, shall flee from Justice, and be found in any of the united states, he shall, upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V

For the more convenient managemen of the general interests of the unite states, delegates shall be annually ap pointed in such manner as the legis lature of each state shall direct, to mee in Congress on the first Monday i November, in every year, with a powe reserved to each state, to recall its dele gates, or any of them, at any time with in the year, and to send others in thei stead, for the remainder of the Year

No state shall be represented in Con gress by less than two, nor by mor than seven Members; and no perso shall be capable of being a delegate fo more than three years in any term o six years; nor shall any person, bein a delegate, be capable of holding an office under the united states, fo which he, or another for his benefit re ceives any salary, fees or emolumen of any kind.

Each state shall maintain its ow delegates in a meeting of the states and while they act as members of th committee of the states.

In determining questions in th united states in Congress assemble each state shall have one vote.

Freedom of speech and debate i Congress shall not be impeached c questioned in any Court, or place o of Congress, and the members of co gress shall be protected in their perso from arrests and imprisonments, du ing the time of their going to and fro and attendance on Congress, exce for treason, felony, or breach of t peace.

ARTICLE VI

No state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled, shall determine otherwise.

ARTICLE VII

When land-forces are raised by any state for the common defence, all offi-

cers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII

All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in Congress assembled.

ARTICLE IX

The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exploration or importation of any species of goods or commodities, whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who

shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states — fixing the standard of weights and measures throughout the united states — regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits

be not infringed or violated — establishing and regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office — appointing all officers of the land forces, in the service of the united states, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences — to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted, — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences neces-

sary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

ARTICLE XI

Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII

All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

ARTICLE XIII

Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at

any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

AND WHEREAS it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. KNOW YE that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July, in the year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

[Signatures omitted]

THE CONSTITUTION OF 1787

EDITOR'S NOTE: When, in late spring of 1787, fifty-five delegates met in Philadelphia it was to revise the Articles of Confederation, not to write a new constitution. These Articles had been adopted by the states at the end of the war for independence. They provided for so weak a central government that the new nation was endangered from both within and without — from within because there was no real union, and from without because old empires on three sides were obviously not reconciled to the establishment of a new nation.

The one common instruction brought to the convention by all the delegates was to "form a more perfect union;" but there were different interpretations of "union," and Washington, who was elected chairman, was discouraged from the first by the number of those who meant to preserve state authority even if it weakened the central government. Nevertheless one of the early resolutions was that an entirely new government should be instituted and that the delegates should provide its constitution. But Washington was not re-

assured until discussions had gone on for several weeks and a compromise was agreed on. This provided for dual government—a *federal* one, the states conceding the powers necessary to taxation, the control of interstate commerce, and the common defense. It was conceived that there could be both union and state sovereignty.

As for the government itself there was quick agreement that it should consist of three branches—executive, legislative, and judicial. But there was controversy between the large and the small states. In a representative legislature there would be more members from the larger states and the smaller ones would be at a disadvantage. This too was finally settled by compromise. The Senate was invented to give all states equal representation in a second house.

There was further controversy about the executive. Should there be a council or should there be one person? The council was in the end given up and the single President accepted, although it might not have been if the delegates had not forecast Washington in the role.

There were many questions left unsettled. The more important of these were the assignment of powers. The central government was to have only those granted to it; the states were to keep all the rest. But the grants were brief and ambiguous. It was this brevity that led to the long controversy between strict and loose constructionists. This finally came to a climax more than half a century later in the Civil War; and the differences went on causing trouble far into the twentieth century.

The other most serious result of brevity was the uncertainty about the assignments to the branches. This resulted in an almost continuous struggle among them as new duties fell to the government and as emergencies arose.

Both these controversies might have been settled by amendment; but the delegates, as a kind of afterthought, provided that amendment should begin with a resolution of both houses of the legislature, then be submitted to the states. It was necessary for three-quarters of them to agree. This would obviously be very difficult. There was an alternate method, even more difficult. This was for three-quarters of the states to petition the Congress for a needed change. The result was that only a few changes were ever made.

The exception was the first group of ten amendments, usually called the Bill of Rights. The framers had thought individual rights well enough protected by the checks and balances of a three-branch system; but when the document was submitted for ratification there were violent objections from those who felt that conservative attitudes had prevailed in its drafting. It was necessary to promise more protection for liberties in order to secure ratification. As it was, the votes were close in many states.

The result of these amendments and the structure of the government was that citizens were made secure from any governmental invasion of

their rights; but there was very little said about duties. The Constitution remained that way. This was perhaps natural for a people just escaped from colonialism; but what people owed to each other and to their government would soon become important too. As late as 1961, in his inaugural address, President Kennedy felt impelled to say to his fellow citizens: "Ask not what your country can do for you — ask what you can do for your country."

The delegates finished their work in September and resolved that if nine of the thirteen states accepted the Constitution it should go into effect. They had no instructions about this; presumably only ratifying states should belong to the new union. But Rhode Island had sent no delegates, two of those from New York had left early, and Patrick Henry of Virginia, together with a number of others, had not appeared at all.

There were fierce arguments in most of the ratifying conventions, but within two years the draft had been accepted—with the promise that the new Congress would propose the first ten amendments. So the new government began, not with universal jubilation but with many dissenters and with no very promising future.

R.G.T.

THE CONSTITUTION OF 1787

Proposed by Convention September 17, 1787
Effective March 4, 1789

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to 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.

SECTION 2. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be

an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes[1] 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.][2] 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 choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

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

SECTION 3. 1. The Senate of the United States shall be composed of two senators from each State, [chosen by the legislature thereof,][3] for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; 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.[4]

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

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

[1]See the 16th Amendment.
[2]See the 14th Amendment.
[3]See the 17th Amendment.
[4]See the 17th Amendment.

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

6. 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.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualifications 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.

SECTION 4. 1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December,[5] unless they shall by law appoint a different day.

SECTION 5. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

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

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

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

SECTION 6. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all

[5]Modified by the 20th Amendment.

cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he 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.

SECTION 7. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves 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.

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

SECTION 8. The Congress shall have the power

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

2. To borrow money on the credit of

the United States;

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

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

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

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

7. To establish post offices and post roads;

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

9. To constitute tribunals inferior to the Supreme Court;

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

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

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

13. To provide and maintain a navy

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

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

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

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

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Con-

titution in the government of the Jnited States, or in any department or)fficer thereof.

ECTION 9. 1. The migration or im-)ortation of such persons as any of the States now existing shall think proper o admit, shall not be prohibited by he Congress prior to the year one housand eight hundred and eight, but a tax or duty may be imposed on such mportation, not exceeding ten dollars for each person.

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

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

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.[6]

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

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

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

8. No title of nobility shall be granted by the United States: and no person holding any office 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.

SECTION 10. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

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

3. No State shall, without the consent of the 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

[6]See the 16th Amendment.

war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

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

2. Each State[7] 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.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in 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 th President, if such number be a ma jority of the whole number of electo appointed; and if there be more tha one who have such majority, and hav an equal number of votes, then th House of Representatives shall im mediately choose by ballot one of then for President; and if no person have majority, then from the five highest o the list the said House shall in lik manner choose the President. But i choosing the President, the votes shal be taken by States, the representatio from each State having one vote; quorum for this purpose shall consis of a member or members from two thirds of the States, and a majority o all the States shall be necessary to choice. In every case, after the choic of the President, the person having th greatest number of votes of the elector shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice Presi dent.[8]

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

4. No person except a natural born citizen or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office

[7]See the 23rd Amendment.

[8]This paragraph was superseded by the 12th Amendment.

who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

5. In case of 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.

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

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

SECTION 2. 1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

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

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

SECTION 3. 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 ex-

pedient; 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.

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

ARTICLE III

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

SECTION 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; to controversies between two or more States; — between a State and citizens of another State,[9]—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].[10]

2. 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 to fact, with such exceptions, and under such regulations as the Congress shall make.

3. 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.

SECTION 3. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and

[9]See the 11th Amendment.
[10]See the 11th Amendment.

omfort. No person shall be convicted
f treason unless on the testimony of
wo witnesses to the same overt act, or
n confession in open court.

. The Congress shall have power to
leclare the punishment of treason, but
o attainder of treason shall work cor-
uption of blood, or forfeiture except
luring the life of the person attained.

ARTICLE IV

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

SECTION 2. 1. The citizens of each
State shall be entitled to all privileges
and immunities of citizens of the sev-
eral States.[11]

2. A person charged in any State
with treason, felony, or other crime,
who shall flee from justice, and be
found in another State, shall on de-
mand 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.

3. No person held to service or
labor in one State under the laws
thereof, escaping into another, shall,
in consequence of any law or regula-
tion 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.[12]

SECTION 3. 1. New States may be
admitted by the Congress into this
Union; but no new State shall be
formed or erected within the jurisdic-
tion of any other State; nor any State
be formed by the junction of two or
more States, or parts of States, without
the consent of the legislatures of the
States concerned as well as of the
Congress.

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

SECTION 4. The United States shall
guarantee to every State in the Union
a republican form of government, and
shall protect each of them against in-
vasion; and on application of the leg-
islature, 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,

[11]See the 14th Amendment, Sec. 1.

[12]See the 13th Amendment.

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 VI

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

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

3. The senators and representative
before mentioned, and the members o
the several State legislatures, and al
executive and judicial officers, both o
the United States and of the severa
States, shall be bound by oath or affir
mation to support this Constitution
but no religious test shall ever be re
quired as a qualification to any offic
or public trust under the United States

ARTICLE VII

The ratification of the conventions o
nine States shall be sufficient for the
establishment of this Constitution be-
tween 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.

[Signatures omitted]

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the legislatures of the several States pursuant to the fifth article of the original Constitution.

AMENDMENTS

First Ten Amendments passed by Congress September 25, 1789.
Ratified by three-fourths of the States December 15, 1791.

ARTICLE I

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.

ARTICLE II

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.

ARTICLE III

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.

ARTICLE IV

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.

ARTICLE V

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

ARTICLE VI

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

ARTICLE VII

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 re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

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

ARTICLE IX

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

ARTICLE X

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.

ARTICLE XI

Passed by Congress, 1794.
Ratified, 1798.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced c prosecuted against one of the Unite States by citizens of another State, c by citizens or subjects of any foreig State.

ARTICLE XII

Passed by Congress, 1803.
Ratified, 1804.

The electors shall meet in their respec tive States, and vote by ballot for Presi dent and Vice President, one of whom at least, shall not be an inhabitant o the same State with themselves; the shall name in their ballots the perso voted for as President, and in distinc ballots, the person voted for as Vic President, and they shall make distinc lists of all persons voted for as Presi dent and of all persons voted for a Vice President, and of the number o votes for each, which lists they shal 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 perso 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 Presi dent, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the

President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March[13] next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose 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.

ARTICLE XIII

Passed by Congress, 1865.
Ratified, 1865.

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

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

ARTICLE XIV

Passed by Congress, 1866.
Ratified, 1868.

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 laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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

[13]See the 20th Amendment.

of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a senator or representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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

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

ARTICLE XV

Passed by Congress, 1869.
Ratified, 1870.

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.

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

ARTICLE XVI

Passed by Congress, 1909.
Ratified, 1913.

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.

ARTICLE XVII

Passed by Congress, 1912.
Ratified, 1913.

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 num-

rous branch of the State legislature.

When vacancies happen in the representation of any State in the Senate, he executive authority of such State hall 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.

ARTICLE XVIII

Passed by Congress, 1917.
Ratified, 1919.

After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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

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

ARTICLE XIX

Passed by Congress, 1919.
Ratified, 1920.

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.

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

ARTICLE XX

Passed by Congress, 1932.
Ratified, 1933.

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

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

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, 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-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice 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.

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

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

ARTICLE XXI

Passed by Congress, 1933.
Ratified, 1933.

SECTION 1. The Eighteenth Article of amendment to the Constitution of th United States is hereby repealed.

SECTION 2. The transportation or im portation into any State, Territory, c Possession of the United States for de livery or use therein of intoxicatin liquors in violation of the laws thereo is hereby prohibited.

SECTION 3. This article shall be in operative unless it shall have been rat fied as an amendment to the Constitu tion by conventions in the severa States, as provided in the Constitution within seven years from the date c the submission thereof to the State by the Congress.

ARTICLE XXII

Passed by Congress, 1947.
Ratified, 1951.

No person shall be elected to the offic of the President more than twice, an no person who has held the office o President, or acted as President, fo more than two years of a term to whic some other person was elected Presi dent shall be elected to the office o the President more than once.

But this article shall not apply t any person holding the office of Presi dent when this article was propose by the Congress, and shall not preven any person who may be holding th office of President, or acting as Presi dent, during the term within whic this article becomes operative fron holding the office of President or act ing as President during the remainde of such term.

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.

ARTICLE XXIII

Passed by Congress, 1960.
Ratified, 1961.

SECTION 1. The District constituting the seat of government of the United States shall appoint in such manner as the 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 shall be considered, for the purpose 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.

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

ARTICLE XXIV

Passed by Congress, 1962.
Ratified, 1964.

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 any poll tax or other tax.

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

ARTICLE XXV

Passed by Congress, 1965.
Ratified, 1967.

SECTION 1. In case of the removal of the President from office or his death or resignation, the Vice President shall become President.

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

SECTION 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.

SECTION 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 of Congress may by law provide, transmi within four days to the president pr tempore of the Senate and the Speake of the House of Representatives thei written declaration that the Presiden is unable to discharge the powers an duties of his office. Thereupon Con gress shall decide the issue, assemblin within forty-eight hours for that pur pose if not in session. If the Congress within twenty-one days after receipt o the latter written declaration, or, i Congress is not in session, withir twenty-one days after Congress i required to assemble, determine by two-thirds vote of both house that the President is unable to dis charge 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.