
PROCESSES OF CONSTITUTIONAL DECISIONMAKING

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**PROCESSES OF
CONSTITUTIONAL DECISIONMAKING**
Cases and Materials

Seventh Edition

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for the countless hours discussing
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Preface

Every casebook involves the construction of a canon—a set of materials and approaches that the editors believe that every student who wishes to master the subject should know. This casebook is no exception. Indeed, we have been particularly conscious of the existing canons of constitutional thought and the kinds of choices that are involved both in the materials presented and in their editing, order, and arrangement. The history of this casebook has been a series of continuing attempts to rethink the existing canon of constitutional law and present a better one. This edition represents our latest views on the subject.

The history of this casebook

The first edition of *Processes of Constitutional Decisionmaking*, created by Paul Brest, and published in 1975, was born out of personal frustration with the existing methods of teaching constitutional law. Invariably beginning with *Marbury v. Madison* and related doctrines of judicial review, most casebooks proceeded to examine bodies of substantive doctrine, subject by subject, without much attention to political or historical context. The question of *how* the courts arrived at their decisions continually arose but was not systematically examined. Nor did casebooks explore the role that legislatures, the executive, and other political institutions (for example, political parties and social movements) played in constitutional decisionmaking. The unspoken and repeated message was that the Constitution was largely what the Supreme Court said it was, and if the Supreme Court had not spoken on a particular subject, there was no constitutional law on the question at all.

The first edition, therefore, focused on the methods of constitutional interpretation and decisionmaking that different actors in the system employed and on the processes through which constitutional doctrine was created. Although much has changed in the book's coverage over the years, this basic focus on methods of constitutional interpretation and on the multiple groups and institutions that participate in the creation of constitutional meaning has remained a constant.

The second edition, published in 1983, reflected the lessons learned from teaching the first edition as well as the interests of its new co-editor, Sanford Levinson. As before, the casebook continued its focus on the processes of constitutional change and the role of constitutional interpretations made by nonjudicial actors. However, beginning with the second edition, the book's emphasis became historical. The opening half of the book was (and continues to be) explicitly organized on historical-chronological lines, so that students would confront the legal consciousness of a particular period in the context of multiple constitutional doctrines. Brest retired from active participation in the casebook after the third edition, published in 1992, but the editors have tried to continue his innovative spirit. The fourth

edition, published in 2000, consolidated the basic approach of the second and third editions, and added two new authors, Jack Balkin and Akhil Amar. Reva Siegel joined the casebook for the fifth edition in 2006.

The organization of the casebook

In this, the seventh edition, we have continued to benefit from classroom experience and from new historical and political science scholarship. Part One of the Casebook, which takes us up to the beginning of the New Deal, is organized chronologically by period. Our primary concern is not the identity of the Chief Justice at a particular point in time (Marshall or Taney) but the succession of *constitutional regimes* in which constitutional law develops. Examples include the early republic of the Federalist (1789-1800) and Jeffersonian (1800-1828) regimes, the Jacksonian regime that leads to the Civil War, and the long regime dominated by the Republican Party that extends from Reconstruction to the New Deal. These chapters examine recurring issues of federalism, property rights, race and sex equality, governmental (and, more particularly, presidential) authority in time of war, treatment of “subversive” speech, and judicial review.

The materials within each of these historical chapters cover different subjects and doctrines but together reflect the constitutional arrangements and political realities that underlie most of the important constitutional questions in a given era. Thus, for example, arguments about state sovereignty and slavery structure much of the jurisprudence of the Jacksonian regime; and we think it is impossible to understand the *Lochner* era’s substantive due process decisions apart from its decisions about the commerce power or the taxing and spending powers. Nor can one understand the nineteenth century’s treatment of women’s rights apart from its understandings about race, or either apart from that era’s understanding of federalism and national power.

Part One of the book ends on the brink of the New Deal, which marks the boundary that inaugurates the “modern” period in American constitutional law, as described in the introduction to Part Two.

Chapter 5 continues the casebook’s historical periodization, covering questions of government power during the New Deal and Civil Rights regime that lasts roughly from 1934 to 1980. This period, although “modern” in the sense of having very different assumptions than those prevalent in the eighteenth and nineteenth centuries, is no longer “contemporary.” The constitutional struggle over the New Deal happened almost 80 years ago. The innovations of the Warren Court, the Civil Rights movement, and the second wave of American feminism in the 1970s seem increasingly distant to most law students; they have become historical artifacts, much like the struggle over the New Deal seemed to the generation that came of age in the 1960s and 1970s. The legal consciousness that underlies much of the Supreme Court’s work during this period has slowly given way to new conceptions of federal power, race relations, and civil liberties. The rise of conservative social movements in the 1970s and 1980s, and the dominance of the Republican Party that they helped engender, have had multiple effects in constitutional law.

Ronald Reagan’s election in 1980 began a second Republican regime, dominated by conservative social movements, and a correspondingly conservative

constitutional jurisprudence, a regime that we are still living in today. This regime has defined our contemporary constitutional world. Whether we are slowly transitioning into a new constitutional regime with a different set of constitutional assumptions will only be known many years after this edition is published.

Chapters 6 through 10 are organized doctrinally. Chapter 6 features sections on contemporary economic regulation, the commerce, taxing, and spending powers, Congressional power under the Civil War amendments, federalism, and separation of powers. It also includes expanded coverage of war and executive power. Chapter 7 covers racial equality and the constitutional treatment of alienage, while Chapter 8 covers sex equality. Chapter 9, entitled, “Liberty, Equality, and Fundamental Rights: The Constitution, the Family, and the Body,” covers rights of liberty and equality that concern sexual autonomy, marriage and family formation, intimate association, bodily integrity, and self-defense. Most but not all of these rights are protected by the Fourteenth Amendment and by the Fifth Amendment’s Due Process Clause. The chapter also includes a section on constitutional struggles over gun rights and the interpretation of the Second Amendment.

Chapter 10, entitled “The Constitution in the Welfare State,” covers affirmative liberties (like education and the rights of the poor), procedural due process, and the problem of conditional subsidies, sometimes called the problem of “unconstitutional conditions.” Chapter 10 is organized in this way because we think that it is important for students to understand the welfare state as a central constitutional structure of our era.

Throughout the doctrinal coverage of Chapters 6 through 10 we have structured the casebook with an eye to placing contemporary events in their historical perspective, continually asking the student to compare them to constitutional transformations and upheavals of the past. The doctrinal discussions of race, gender, sexual autonomy, sexual orientation, and gun rights have been thoroughly updated and revised to show how constitutional change occurred in the context of social mobilizations and counter-mobilizations and other aspects of political struggle and contestation. This basic strategy, we hope, will help students to take the longer view of the ebb and flow of American constitutional culture, and to reflect on the key role that social movements and political parties play in shaping that culture.

Our historical approach

We have worked to make the present edition compatible with many different ways of organizing a basic course in constitutional law; nevertheless we retain a strong commitment to a historical approach. As noted above, even in materials that are doctrinally organized, we have tried to highlight the social and political context in which constitutional decisionmaking occurs. A historical approach, we believe, has virtues that are lost in a purely clause-bound approach to constitutional law.

In particular, we think it is important for students to recognize that notions of what constitutes a good or persuasive constitutional argument have changed and will continue to change over time. Arguments that might have seemed perfectly reasonable for well-trained lawyers in one period can seem bizarre or “off-the-wall” in earlier or later periods. Arguments that seem to have been written off

for good (like the compact theory of state sovereignty) uncannily reemerge in new guises a century later. Visionary claims of social movements that would be rejected by all right-thinking lawyers of the period become the accepted orthodoxy of later eras. The ideological valence of arguments—as “liberal” or “conservative,” moderate or radical—also drifts as arguments are introduced or repeated in new social and legal contexts. Finally, the popularity and persuasiveness of different styles of constitutional argument—for example, textualism or originalism—wax and wane with historical and social change and with concomitant changes in the legal profession.

There is, in short, no transhistorical criterion for “thinking like a constitutional lawyer,” other than an abiding faith in the basic constitutional enterprise. There is no better way to demonstrate this, we think, than to let students confront the actual texts produced in different periods and study closely the “common sense” and authoritative legal arguments of the past, witnessing both their strangeness and their resemblance to the constitutional common sense of our own day.

One of the reasons why constitutional argument changes as it does is that the practice of constitutional reasoning is deeply connected to changes in political and social life. Although courts play a central role in the history of constitutional law, other parties play roles equally important in shaping constitutional meaning. Our understandings of the American Constitution would have been very different without Jacksonianism, abolitionism, the Civil War, the feminist movement, the New Deal, the Civil Rights movement, the Religious Right, and other conservative political movements of the modern period. For this reason, we have included not only constitutional arguments from the executive and legislative branches of government, but also constitutional interpretations offered by representatives of important social movements in the country’s history, as well as by members of the groups that mobilized against them. And we have repeatedly tried to stress the connections between what occurs in the language of court opinions and the political and social events that surround those decisions.

Finally, we continue to emphasize a historical approach to understand our debt to the past, and to reckon with both our moral successes and our moral failures. From the second edition on, *Processes of Constitutional Decisionmaking* has contained far more sustained coverage of chattel slavery than any other casebook. We think that, as a doctrinal matter, the question of slavery haunts the whole of antebellum constitutional law and that the legacy of slavery affects the great issues of federalism and equality that came later. But we think it is equally important for law students to confront slavery precisely because everyone now recognizes it to have been a great evil. It was a great evil that was sustained and perpetuated through law and, in particular, through constitutional law as interpreted by the finest legal minds America had to offer. Law students must come to understand how well-trained lawyers acting in good faith could have participated in such a system and rationalized it according to well-accepted modes of legal argument, justifying their work in the name of America’s great charter of democracy, liberty, and equality. We think that if they can recognize this use of law in America’s constitutional past, they will be better equipped to ask themselves the much more difficult question of whether well-trained lawyers in our own era could be similarly engaged in the rationalization of great injustices in the name of our Constitution, even though there may be great disagreement about what these are. The goal of a historically informed

approach is not merely to see the achievements and injustices of the past through our own eyes, but to remind us to consider how our present interpretations of the Constitution might look to future generations.

Constructing the constitutional canon

Our commitment to a historical approach is joined to an equally strong commitment to rethinking the canons of constitutional law—the materials, issues, and problems that law students are exposed to and that law professors write and theorize about. To this end, we have added materials on the Progressive Era amendments, the constitutional controversy surrounding the adoption of paper money, the procedural irregularities surrounding the adoption of the Fourteenth Amendment, America's constitutional treatment of Native Americans, and America's role as a colonial power. We have expanded coverage of the history of the women's movement and the constitutional treatment of women from the antebellum era to the adoption of the Nineteenth Amendment to the struggles over the Equal Rights Amendment and beyond. We think that these additions will give students a richer and fuller vision of constitutional history. They also pose genuine and interesting challenges for constitutional theorists who have neglected important aspects of constitutional interpretation and constitutional decisionmaking because traditional approaches offer much too narrow a view of the relevant materials that must be explained and justified.

If there is one theme that runs through this book, it is that the Supreme Court is not the only interpreter of the Constitution, even if it is surely the most obvious and important one for most lawyers. This view is clearly reflected in our construction of the canon. Throughout the book, we take seriously constitutional decisionmaking by nonjudicial institutions by including materials ranging from resolutions by the Kentucky and Virginia legislatures in the late eighteenth century, to constitutional interpretations by the President and Congress of the United States, to constitutional assertions by social movements, such as the Seneca Falls Declaration of 1848, to constitutional arguments by particular individuals such as senatorial candidates Abraham Lincoln and Stephen Douglas, the noted abolitionist Frederick Douglass, and civil rights pioneer Pauli Murray. Indeed, far from being the only source of constitutional law, the Supreme Court is not even the only judicial source. In this edition we have included more constitutional arguments by lower federal courts, by state supreme courts (often interpreting analogous provisions of state constitutions), and even a few references to the constitutions of other countries.

Among the most important elements of the Constitution are structural features that are rarely litigated, including, among others, bicameralism, equal voting power in the Senate, and the presidential veto. Lawyers pay little attention to them because they are rarely litigated and so little judicial doctrine has developed around them. Nevertheless, these choices are crucial features of constitutional design and the political science literature that studies their consequences is considerable. We have tried to raise a few issues of constitutional design where appropriate, but given the natural focus of a law school casebook, we can do no more than hint at some of the more important questions these provisions raise.

Just as any construction of a constitutional canon involves incorporation and inclusion of some materials, it must also include selection and exclusion of others. As constitutional law has grown in richness and complexity over the years, it has become increasingly difficult to do justice to the field within the pages of a single casebook. Fortunately, new technologies increasingly allow us to escape the limitations of traditional forms of publication. Thus, we have placed parts of our teaching materials on a special website, <http://jackbalkin.yale.edu/conlawnet>. There readers will find special topics and materials that they can download and use to supplement the materials found in the casebook. Through this combination of website and traditional text, we hope to create a flexible set of teaching materials that can respond better to future changes in the field.

The organization of any casebook is inevitably ideological, especially in a subject as fraught with ideology as constitutional law. No approach to the study of constitutional law is independent of the instructors' or casebook editors' more general intellectual and political interests. For example, we have already noted the amount of space devoted to the question of slavery, which reflects our view that the question of slavery pervaded American law before the Civil War and that its aftermath set the stage for epic social and constitutional struggles that show no signs of abating to this day. We have also emphasized the role of textual and structural argument in constitutional interpretation, as well as the centrality of social movements and political parties as engines of constitutional change.

The first edition of *Processes of Constitutional Decisionmaking* explicitly adopted the ideology of the legal process tradition identified with Albert Sacks and Henry Hart, who were especially influential teachers at the Harvard Law School following World War II (and with whom Paul Brest studied during the early 1960s). Hart and Sacks argued that there existed apolitical decisionmaking procedures, adherence to which could provide substantively acceptable and politically legitimate decisions. Although the validity of this hypothesis remains a central concern of this book—for it is a crucial matter about which every student must come to his or her own judgment—the second edition (and its successors) manifested considerable skepticism about the legitimating power of process divorced from larger substantive political values. Nothing that has happened since 1981, when the second edition was prepared, has lessened our skepticism.

The Constitution does not belong to the lawyers, to the politicians, or even to the judges. It belongs to everyone. And the Constitution matters and should matter to everyone, even if arguments about the Constitution are not always phrased in the proper constitutional grammar recognized by legal professionals. Our era, like those before it, is a time of vigorous debate about the central constitutional issues of American life. In this book we have tried to bring out the political and social assumptions of contemporary constitutional discourse and contemporary constitutional decisionmaking. We have tried to show where these assumptions originated and how they have been transformed through time. But, of course, for every assumption that is consciously illuminated, others remain hidden in the shadows. You will get the most out of a course taught from this casebook if you take its agendas seriously while keeping a sharp eye out for its unstated assumptions. For our part, the student we seek is not one who necessarily agrees with us, but one who is willing to engage critically with us and, in the process, to learn and grow.

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Editorial Note

Throughout this book, additions to and deletions from quoted material are indicated by brackets and ellipses except that (without notice) citations are modified and eliminated, footnotes are eliminated, and paragraphs are modified to make edited excerpts coherent. Footnote numbers in opinions and other quoted material have been changed to consecutive letters. The authors' own footnotes, including those inserted into quoted material and cases for purposes of editorial comment, are indicated by numbers, running consecutively through each chapter.

PROCESSES OF CONSTITUTIONAL DECISIONMAKING

The Constitution of the United States

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

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 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.¹ The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[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 chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

1. Changed by section 2 of the Fourteenth Amendment.

Section 3. [1] The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,² 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.³

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

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

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[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 disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

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 chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.⁴

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 Behaviour, 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;

2. Changed by section 2 of the Seventeenth Amendment.

3. Changed by clause 2 of the Seventeenth Amendment.

4. Changed by section 2 of the Twentieth Amendment.

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 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 become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[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 Offences 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, dock-Yards, 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 Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[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 herein before directed to be taken.⁵

[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.

5. But see the Sixteenth Amendment.

[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 any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[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 it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Section 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[3] 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 the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest

Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.⁶

[4] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[5] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[6] 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.⁷

[7] 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.

[8] 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 Offences 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 expedient; he may, on extraordinary Occasions, convene

6. Superseded by the Twelfth Amendment.

7. Changed by the Twenty-Fifth Amendment.

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 Behaviour, 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; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[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 Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.⁸

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 Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

ARTICLE V

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

ARTICLE 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

8. Superseded by the Thirteenth Amendment.

in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.⁹ 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.

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 CONSTITUTION¹⁰

AMENDMENT I [1791]

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.

AMENDMENT II [1791]

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.

AMENDMENT III [1791]

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.

AMENDMENT IV [1791]

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

9. The ninth state ratified the Constitution on June 21, 1788. Virginia and New York ratified later in 1788, North Carolina in 1789, and Rhode Island in 1790. George Washington was inaugurated as the first President on April 30, 1789.

10. The Twenty-First Amendment was ratified by state conventions.

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.

AMENDMENT V [1791]

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

AMENDMENT VI [1791]

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

AMENDMENT VII [1791]

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

AMENDMENT VIII [1791]

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

AMENDMENT IX [1791]

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

AMENDMENT X [1791]

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.

AMENDMENT XI [1798]

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

AMENDMENT XII [1804]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall chuse immediately, by ballot, the President. But in chusing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not chuse a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.¹¹—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.

AMENDMENT XIII [1865]

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

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

AMENDMENT XIV [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 law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

11. Superseded by section 3 of the Twentieth Amendment.

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 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 the power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV [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 the power to enforce this article by appropriate legislation.

AMENDMENT XVI [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.

AMENDMENT XVII [1913]

[1] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one

vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

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

[3] 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.

AMENDMENT XVIII [1919]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.¹²

AMENDMENT XIX [1920]

[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 sex.

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

AMENDMENT XX [1933]

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

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

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 shall have qualified, declaring who shall then act as President, or the manner

12. Repealed by the Twenty-First Amendment.

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 chuse 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 chuse 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.

AMENDMENT XXI [1933]

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

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

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

AMENDMENT XXII [1951]

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

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

AMENDMENT XXIII [1961]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the

election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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

AMENDMENT XXIV [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 poll tax or other tax.

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

AMENDMENT XXV [1967]

Section 1. In case of the removal of the President from office or of 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 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 as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.